

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

**IN THE MATTER OF NORBECK
MONTESSORI DAY SCHOOL, INC.**

Petitioner

Wyatt Bissett

Brian Donnelly

Timothy Daniel

Keira Rakestraw

Mike Lenhart

For the Petitioner

Susan W. Carter, Esquire

Attorney for the Petitioner

John Powers

Marie Lisa McKillop

In Support of the Petition

Before: Martin L. Grossman, Hearing Examiner

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Board of Appeals No. S-2802
(OZAH Referral No. 11-26)

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

On January 19, 2011, Petitioner, Norbeck Montessori Day School, Inc.,¹ filed a Petition for a Private Educational Institution Special Exception to allow construction and operation of a private school for 180 students and 34 employees at 15920 Emory Lane, Rockville, Maryland. The Norbeck Montessori Day School already exists and operates at 4500 Muncaster Mill Road in Rockville, but it is currently located in property owned by a religious organization (Church of the Nazarene) and therefore is exempt from the requirement for a special exception pursuant to Zoning Ordinance §59-G-2.19(e).² The proposed new location (15920 Emory Lane) is owned by Norbeck at Emory Lane, LLC, which is wholly owned by the same Bissett family which owns the Petitioner corporation.³ The subject site, which has the Tax Account No. 08-00706741, contains 5 acres and is zoned RE-1 (residential, one-family). The Special Exception is sought pursuant to Zoning Code Section 59-G-2.19 (Educational Institutions, Private).

On February 15, 2011, the matter was noticed for a hearing to be held on June 3, 2011 (Exhibit 14). Petitioner subsequently moved to amend its plans (Exhibit 22), and a notice of that amendment was issued on May 2, 2011 (Exhibit 24). The motion to amend was unopposed, and thus was automatically granted as specified in the notice.

On April 30, 2011, the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) filed its Report (Exhibit 27)⁴, which recommended approval of the petition, with conditions which have been included in Part V of this report.

¹ Petitioner is wholly owned by the Bissett family.

² The school's 30-year lease with the Church will expire in August 2012, and it must therefore relocate before that date. Second Revised Statement of Operations, Exhibit 42(a), p. 1.

³ By a letter filed on June 6, 2011 (Exhibit 42(c)), Norbeck at Emory Lane, LLC, expressly authorized Petitioner Norbeck Montessori Day School to use and occupy its land at 15920 Emory Lane and to pursue the instant special exception on its property.

⁴ The Technical Staff Report, Exhibit 27, is frequently quoted and paraphrased herein.

The Montgomery County Planning Board reviewed this case on May 12, 2011, and unanimously recommended approval of the petition, as summarized in its letter to the Board of Appeals dated May 18, 2011. Exhibit 34. The Planning Board noted in its letter that it had also unanimously approved Petitioner's Preliminary Forest Conservation Plan.

Three letters of opposition (Exhibits 15, 19 and 30)⁵ and ten letters of support (Exhibits 20, 21, 25, 26, 28, 29, 31, 32, 33 and 36) have been received from the community. The letters in opposition mostly raise concerns about traffic safety and volume on Emory Lane. The letters in support mostly extol the virtues of the school, which has been operating at nearby locations for 37 years.

The hearing proceeded as scheduled on June 3, 2011. Petitioner called five witnesses, and two witnesses from the community testified in support of the petition. No opposition appeared at the hearing. The record was held open for revisions to the Statement of Operations resulting from the hearing and for the filing of additional materials by June 6, 2011, as requested by the Hearing Examiner. Other parties and Technical Staff were given until June 13, 2011, to comment on the new filings. Petitioner timely filed the additional materials and revisions on June 6, 2011 (Exhibits 42 and 42(a) through (d)), and no further comments were received. The record closed, as scheduled, on June 13, 2011.

As will appear more fully below, letters from the neighbors raised some legitimate concerns about traffic safety and volume on Emory Lane, but Petitioner fully addressed those points, and they do not warrant denial of the subject petition, given the steps taken by Petitioner to deal with the issues raised. The Hearing Examiner therefore recommends approval of the petition, with the conditions recommended in Part V of this report.

⁵ The letter from Michele Kanner, on behalf of the North Creek Civic Association (Exhibit 30), notes that they are not opposed to the petition, *per se*, but they feel that it should not be permitted absent road improvements.

II. FACTUAL BACKGROUND

A. The Subject Property

The subject site is located on the West side of Emory Lane, approximately 500 feet north of its intersection with Muncaster Mill Road (MD 115). The property consists of an approximately five (5) acre parcel of land, described as Parcel 147, Tax Map HS 22, with the address of 15920 Emory Lane in Rockville, Maryland. The property is zoned RE-1 and has not been subdivided. Although located in Rockville, it is within the Olney Master Plan area. As can be seen on the following location map provided by Technical Staff (Exhibit 27, p. 3), the property is located approximately one-third of a mile from the School's current operating site on Muncaster Mill Road.



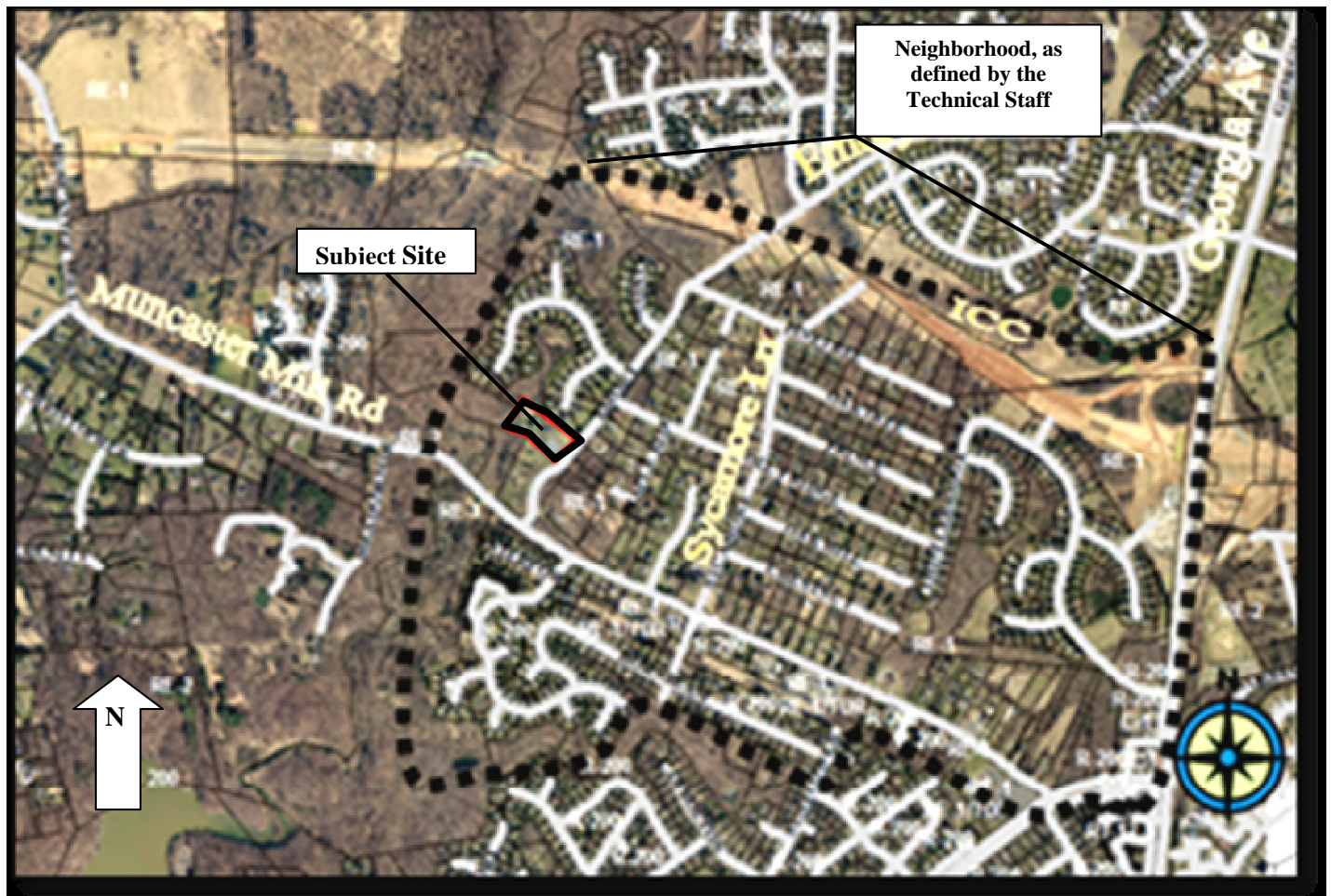
According to Technical Staff, the property is characterized by slopes, large mowed grassy areas and an existing forest area. It also contains two springs, and about one third of the property is located within a stream valley buffer (but is not within a special protection area). The site is currently accessed from Emory Lane via a long narrow driveway that leads to the center of the property where an existing single family-dwelling, constructed in 1936, is located. Also on the site are a large barn, a shed, an outdoor swimming pool, and a large concrete pad. Exhibit 27, pp. 6, 9. These features can be seen in the following aerial photograph provided by Technical Staff (Exhibit 27, p.4):



As noted by community residents who wrote in, there is a severe curve in Emory Lane at the location of the present driveway, which would create a safety hazard if the entrance were not moved. As will be discussed below, Petitioner's plans include relocation of the driveway entrance.

B. The Neighborhood

Technical Staff proposed to define the neighborhood as bordered by the Inter-County Connector (ICC) on the north; Georgia Avenue (MD 97) on the east; Manor Run and Hannans Way on the south; and North Branch Stream Valley Park on the west. Exhibit 27, p. 6. It is shown below (dotted line) on a Neighborhood Map from the Technical Staff report (Exhibit 27, p. 7):



Petitioner felt that this definition of the neighborhood was “a little bit expansive,” but “acceptable.” Tr. 10-11; 38-39. The Hearing Examiner agrees, and accepts Staff’s definition of the general neighborhood.

As reported by Technical Staff, the surrounding area is generally characterized by single family residential dwellings on large lots, parkland and undeveloped parcels in the RE-1, RE-2, RE-1/TAR and R-200 Zones. The subject site is surrounded by single-family dwellings north and south, including a registered historic property (south), and parkland (west), all in the RE-1 Zone. Three of the four properties located across Emory Lane confronting the property are also developed with single-family dwellings, with the remaining one being vacant. Exhibit 27, p. 7.

Staff did not report the existence of any other special exceptions in the immediate area.

C. The Master Plan

The subject site is located at the extreme southern end of the area covered by the 2005 Olney Master Plan. As noted by Technical Staff (Exhibit 27, p. 7), the Master Plan does not provide specific recommendations for the property; nor does it identify particular areas that are deemed suitable for the proposed use as a private educational institution. However, the Master Plan does contain recommendations regarding special exception uses in general (Plan, p. 42):

Special Exception projects should be compatible with the development pattern of the adjoining uses in terms of height, size, scale, traffic and visual impact of the structures and parking lots. In addition, special exception uses of a commercial nature that do not need large properties and can be located in the Town Center should be discouraged in the residential areas, especially along major streets.

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Recommendations:

- 1. Discourage special exception uses along Georgia Avenue between Norbeck Road and the Town Center to preserve its low-density residential character.**

2. **Minimize the negative impacts of special exceptions uses such as non-residential character, visibility of parking lots, excessive size, height and scale of buildings, and intrusive lighting.**
3. **Discourage special exceptions uses with excessive imperviousness levels.**
[Emphasis in original.]

Petitioner's site planner, Brian Donnelly, opined that Petitioner's proposal meets the requirements. He stated that the proposed imperviousness is around 20 percent, and the existing imperviousness is around 15 percent, so it's a fairly moderate increase over the existing conditions. The proposed development is generally residential in character with scale and massing similar to a residential structure. Tr. 83-85.

Although its Area 3 Planning team appears to have some reservations about compatibility (see April 16, 2011 memorandum attached to the Staff report), Technical Staff concluded that "The Proposed use does not conflict with the 2005 Olney Master Plan." Exhibit 27, p. 14. Staff found that the small increase in imperviousness

. . . does not constitute a significant negative impact on the environmental health of this portion of the Upper Rock Creek watershed. The levels of imperviousness proposed for this project do not meet a reasonable definition of excessive that would conflict with the Plan's recommendation. [April 16, 2011 memorandum attached to the Staff report and quoted in Exhibit 27, at p. 14.]

Technical Staff also found that the proposed buildings will be compatible with the residential area (Exhibit 27, pp. 11-12):

The exterior of the proposed four new buildings appears residential and incorporates several features of a single-family detached home including a residential type entrance, windows and low roofing. The existing dwelling and barn will be retained as part of the proposed development of the site. The design and scale of the new building maintain compatibility with that of the existing residential structure and barn. The surrounding area characterized by residential uses of semi-rural nature. The proposed design of the building will be appropriate and relates well with the characteristics of existing buildings in the area.

Based on this record, the Hearing Examiner concludes that the application is consistent with the recommendations contained in the 2005 Olney Master Plan.

D. Proposed Use

1. Summary of Proposed Use:

The Petitioner seeks a special exception pursuant to Section 59-G-2.19 of the Zoning Ordinance to permit construction and operation of a Private Educational Institution for up to 180 children, the Norbeck Montessori Day School, which has been operating at a nearby location for 37 years.⁶ The proposed use at the new site on Emory Lane in Rockville is well illustrated by the rendered landscape plan (Exhibit 40):



⁶ The school is currently located on property owned by a religious organization (Church of the Nazarene) and therefore is exempt from the requirement for a special exception pursuant to Zoning Ordinance §59-G-2.19(e).

Petitioner's proposal includes retention of an existing dwelling and a barn, removal of a swimming pool and riding area, and addition of six new, one-story, classroom buildings that are linked to each other by a wooden deck (Buildings 2 and 4 are attached to each other, as are Buildings 3 and 5, giving the outward appearance of a total of four buildings). The existing one and a half story residence located on the five acre property will be used as grounds keeper's residence or for storage, and the existing barn will be used for storage.

The existing driveway will be relocated to the northern end of the property to improve sight distances. The new asphalt driveway will be constructed to provide access to Emory Lane, and as shown above, will form a circular loop around the existing residence to facilitate on-site circulation, while providing three student drop-off/pick-up areas in front of the classrooms.

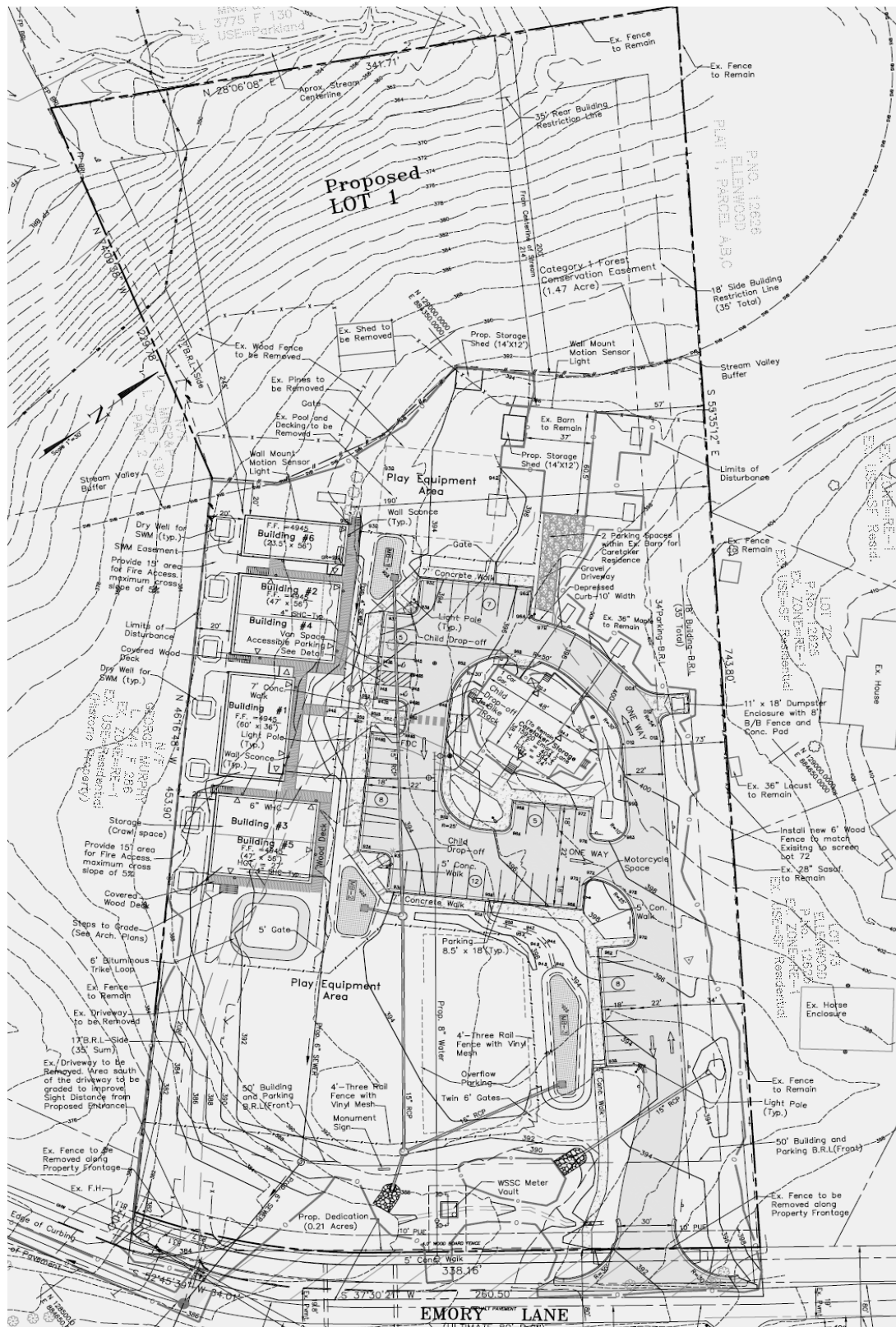
The proposed development, including the existing structures that will be retained, will have a total building area of 13,166 square feet and a surface parking area with 48 spaces. Two of the parking spaces are within the existing barn and one space is within the garage attached to the existing house. The remainder will be provided in areas along the edge of the driveway. "Overflow parking" for occasional special events will be provided on the two grassy play areas, one to be located at the front of the property and the second to be located in the rear yard between the classrooms and the existing barn.

A four-foot, three rail, fence with vinyl mesh will be placed around the play areas, and there will be age appropriate outdoor play equipment located within the outdoor play areas. Two small sheds to provide for storage of play equipment, each measuring approximately 14 feet by 12 feet, will be located next to each of the play areas. A dumpster will be located on the northern side of the driveway, where it will be accessible for collection. The dumpster will be screened by an eight (8') foot board-on-board fence enclosure.

Landscaping, lighting, signage and operations will be discussed in separate sections below.

2. Revised Site Plan:

The revised Special Exception Site Plan (Exhibit 22(1)), is reproduced below:



The Site Data, Development Standards and Notes set forth on the Site Plan are shown below:

SITE DATA

SUBJECT PROPERTY: Parcel 147 (Tax ID #00706741)
 LOT AREA: Gross Tract Area = 217,937 S.F. or 5.00 AC.
 Proposed Dedication = 9,490 S.F. or 0.21 AC.
 Net Tract Area = 208,447 S.F. or 4.78 AC
 ZONING CLASSIFICATION: RE-1 (Residential) - Olney Master Plan Area
 PROPERTY ADDRESS: 15920 Emory Lane, Rockville, Maryland
 PROPOSED USE: Private Educational Institute – 180 Students/34 Staff

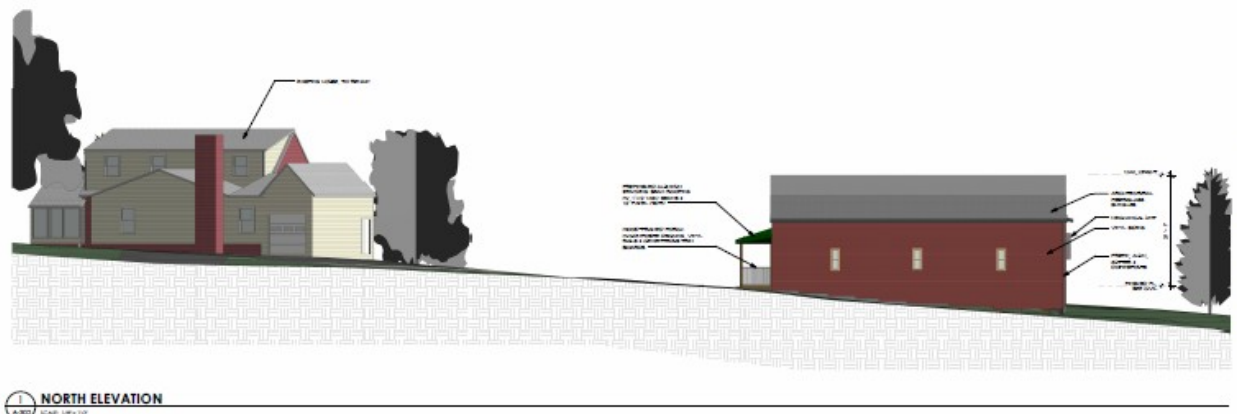
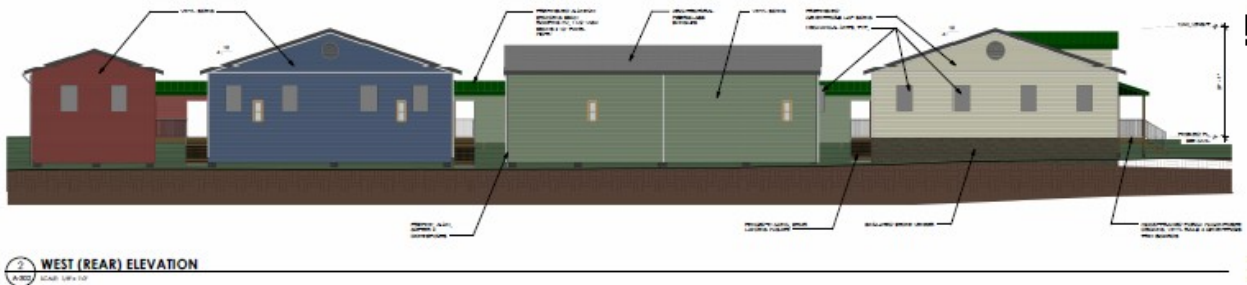
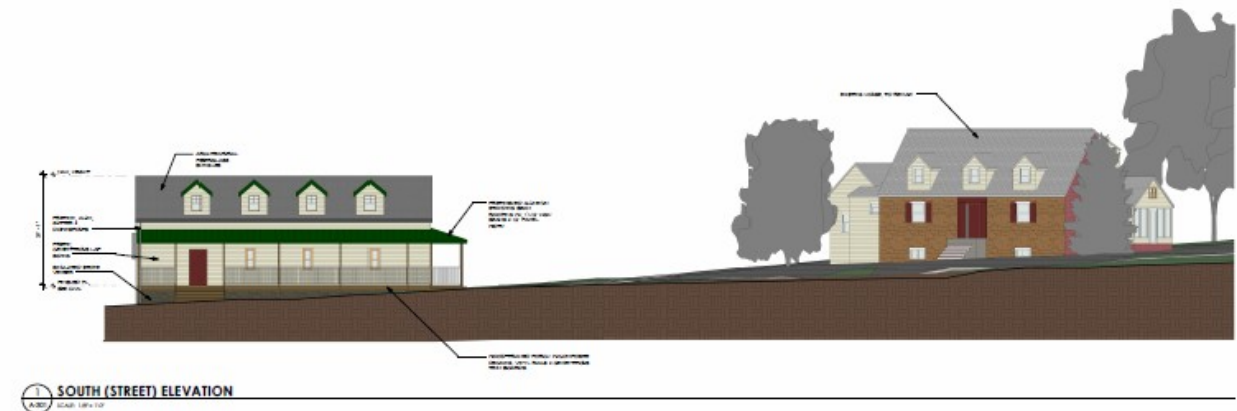
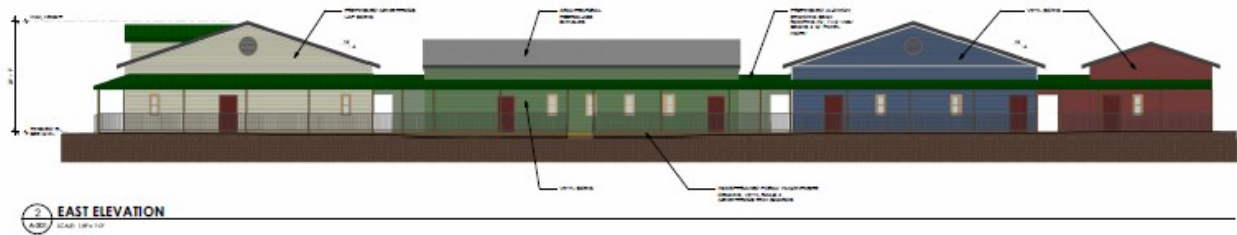
DEVELOPMENT STANDARDS

	<u>REQUIRED /ALLOWED</u>	<u>PROPOSED</u>
STUDENT/PUPILS DENSITY (59-G-2.19(4)a)	87 Pupils/acre 415 Pupils	36.0 Pupils/acre 180 Pupils
BUILDING SETBACK REQUIREMENTS		
PROPOSED CLASSROOMS/ADMIN.		
Public R/W (Emory Lane)	50'	208'
Side RE-1 Zone (South)	17' Min/Sum 35'	20'
Side RE-1 Zone (North)	17' Min/Sum 35'	190'
Rear RE-1 Zone (W)	35'	235'
EXISTING CARETAKER RESIDENCE/STORAGE (To Remain)		
Side (North)	15'	73'
Public R/W (East)	80'	270'
ACCESSORY BUILDINGS (59-C-1.326(a)(3))		
EXISTING BARN (To Remain)		
Side R-200 Zone (North)	15'	57'
Public R/W (East)	80'	270'
Rear	35'	214'
BUILDING HEIGHT (59-C-1.327)		
Proposed Classrooms/ Admin. Bldgs.	50'	22'(1)
Ex. Residence	None Specified	24'(1)
Ex. Barn (Accessory Building)	None Specified	14'(1)
BUILDING COVERAGE (59-C-1.328)	15% OR 32,690 s.f.	10.7% or 21,400 s.f.
BUILDING AREAS +/- 13,166 s.f.		
Ex. Residence (To Remain)	2,212 s.f. (per tax Records)	
Ex. Barn/Storage (To Remain)	2,050 s.f.	
Proposed Building 1	2,254 s.f.	
Proposed Buildings 2 and 4	2,640 s.f.	
Proposed Buildings 3 and 5	2,641 s.f.	
Proposed Building 6	1,369 s.f.	
PARKING SETBACK REQUIREMENTS (59-E-2.81)(59-E-2.83(b))		
PUBLIC R/W (Emory Lane)	50'	75'
Side RE-1 ZONE (North)	34'*	222'
Side RE-1 ZONE (South)	34'*	103'
Rear RE-1 Zone (West)	35'	>200'
*Parking setback twice the requirements for the side yard Building setback within the zone (17' x 2)		
<u>STREET PARKING AND LOADING</u>	<u>REQUIRED/ALLOWED</u>	<u>PROPOSED</u>
SURFACE PARKING FACILITY AREA	NONE SPECIFIED	15,300 s.f.
INTERNAL LANDSCAPING (59-E-2.74)	5% or 765 s.f.	12 % or 1,944 s.f.
PARKING (59-E) (34 Staff)	34	48 Total
STANDARD AUTOMOBILE		43
GARAGE SPACES		3
(2 space within Ex. Storage Barn, 1 space within Ex. Caretakers)		
RESERVED FOR THE H/C (59-E-2.23)	2 Total	2 Total
(Includes One Van Accessible Space)		
BIKE PARKING SPACES (59-E-2.3)	1/20 = 3	1 RACK OF 4
MOTORCYCLE (59-E-2.3)	2% = 1	1

NOTES:

1. APPROXIMATE BUILDING AREAS & HEIGHT PROVIDED BY PROJECT ARCHITECT AND CHANGE AS PART OF THE FINAL BUILDING DESIGN
2. PROPOSED LIGHTING WILL COMPLY WITH SECTION 59-1.23(h) AND 59-G2.19(4)(b). PROPOSED LIGHTING WILL NOT RESULT IN LIGHTING LEVELS THAT EXCEED 0.1 fc AT THE PROPERTY LINE.SEE LIGHTING AND PHOTMETRIC PLAN.

Rendered Elevations for the proposed buildings (Exhibits 9(f) and (h)) are shown below:



Petitioner's architect, Timothy Daniel, testified (Tr. 91-97) that his primary objectives in design of the proposed new school were to create buildings whose scale and character are in harmony with the surrounding residential, quasi-rural character of the surrounding neighborhood, and to ensure safe and efficient operation of the school.

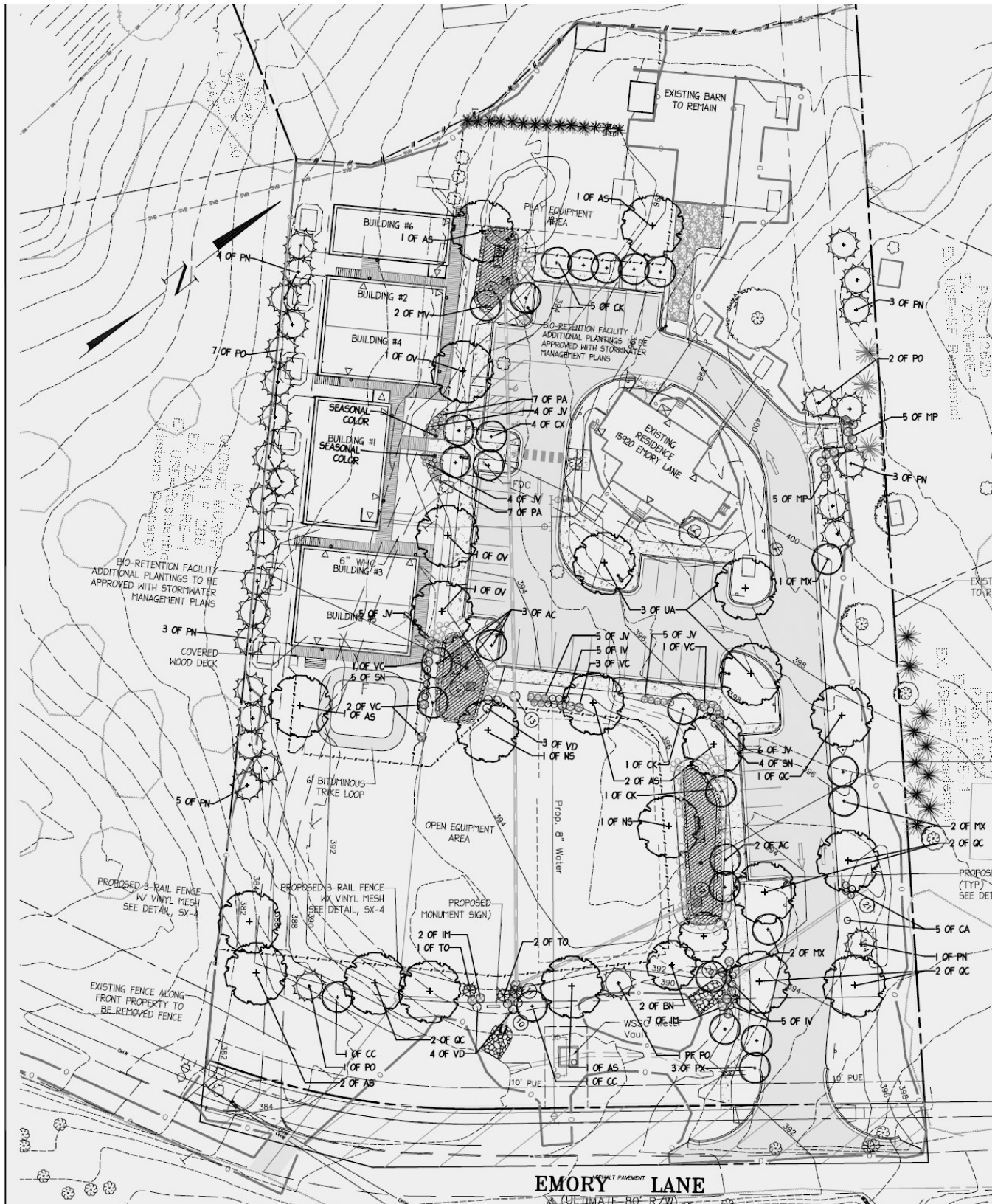
These goals were accomplished by retaining the existing house on the site to ensure that continued residential feel; setting the buildings back from Emory Lane to respect the sight distance that is typical throughout the area; maintaining a distance away from the adjacent residences that are to the north of the site; and also by building frontage to have primarily residential character, and to relate distinctly with the existing residential building on the site.

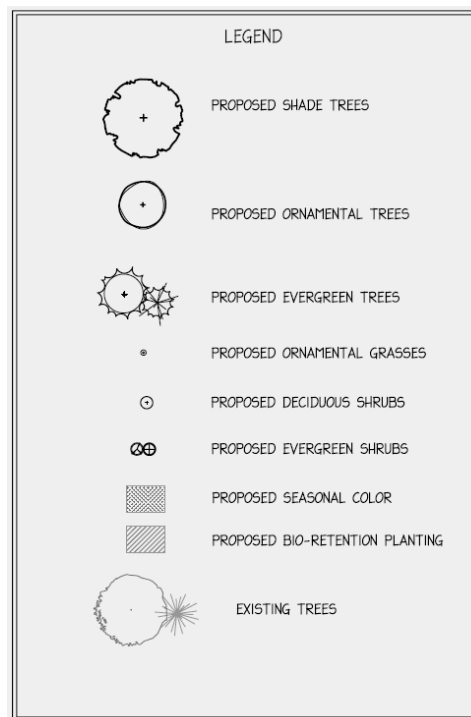
The new buildings are comprised of four distinct masses of residential scale, that are aligned along the south property line. They are all one-story structures similar to the existing house. According to Mr. Daniel, they are also organized along the site to follow the contour lines along the south property line to minimize disruption of the existing grades, and to set the buildings at an elevation that is lower than the existing house so that, as viewed from Emory Lane, the existing house has primacy. Also the materials used at that portion of the building relate to the existing house in terms of the texture and the color. Some of the roof massing consists primarily of gable forms with dormers facing Emory Lane. The buildings are connected by continuous walkways that are covered and have a porch appearance.

In Mr. Daniel's opinion, the proposed structures satisfy the requirements of §59-G-1.23(g) of the Zoning Ordinance that they must be well-related to the surrounding area in their siting, landscaping, scale, bulk, height, materials and textures, and must have a residential appearance where appropriate. They will also be architecturally compatible with the surrounding development, in accordance with Section 59-G-2.19(a)(2).

3. Landscaping and Fencing:

Landscaping on the site is shown on the Landscape and Lighting Plan (Exhibits 22(n) & (o)):





LANDSCAPE PLANT LIST								
KEY	QTY	BOTANICAL NAME	COMMON NAME	CAL	HGT	SPD	ROOT	SPACING
SHADE TREES								
AS	7	Acer saccharum 'Green Mountain'	Green Mountain Sugar Maple	2 1/2 - 3"			B&B	
BN	2	Betula nigra 'Hortage'	Hortage River Birch	2 1/2 - 3"			B&B	
NS	2	Nyssa sylvatica	Black Gum	2 1/2 - 3"			B&B	
OV	3	Ostrya virginiana	American Hopbloom	2 1/2 - 3"			B&B	
OC	7	Quercus coccinea	Scarlet Oak	2 1/2 - 3"			B&B	
UA	3	Ulmus americana 'Valley Forge'	Valley Forge Elm	2 1/2 - 3"			B&B	
EVERGREEN & DECIDUOUS CONIFER TREES								
PN	13	Pinus nigra	Austrian Pine		7-8'		B&B	
PO	16	Picea canadensis	Ontario Spruce		7-8'		B&B	
TO	3	Thuja occidentalis 'Nigra'	Dark American Arborvitae		5-6'		Cont.	
ORNAMENTAL TREES								
AC	6	Amandorhian canadensis 'Spiral'	Spiral Serviceberry		8-10'		B&B	
CC	2	Cercis canadensis	Eastern Redbud		8-10'		B&B	
CX	4	'Stellar Pink' ('Rutger')	Stellar Pink Dogwood		8-10'		B&B	
CK	7	Cornus kousa	Kousa Dogwood		8-10'		B&B	
MV	2	Magnolia virginiana	Sweetbay Magnolia		8-10'		B&B	
MX	3	'Robinson'	Flowering Crapapple		8-10'		B&B	
FX	3	Prunus x incana 'Okame'	Okame Cherry		8-10'		B&B	
DECIDUOUS SHRUBS								
CA	6	Clethra alnifolia 'Hummingbird'	Summersweet		24-30"		Cont.	36" o.c.
IV	10	Ilex virginica 'Henry's Garnet'	Henry's Garnet Sweetgum		24-30"		Cont.	36" o.c.
MF	16	Moralea pensylvanica	Northern Bayberry		30-36"		Cont.	48" o.c.
SN	9	Spiraea nipponica 'Snowmound'	Snowmound Spirea		24-30"		Cont.	36" o.c.
VD	7	Viburnum dentatum 'Ralph Senior'	Autumn Jazz Viburnum		30-36"		Cont.	48" o.c.
EVERGREEN SHRUBS								
IM	2	Ilex x meserveae 'China Boy'	China Boy Holly				Cont.	48" o.c.
	7	Ilex x meserveae 'China Girl'	China Girl Holly					
JV	29	Juniperus virginiana 'Grey Owl'	Grey Owl Juniper		18-24"			36" o.c.
VC	7	Viburnum x burkwoodii 'Conoy'	Conoy Viburnum		30-36"		Cont.	48" o.c.
ORNAMENTAL GRASSES & GROUNDCOVERS								
FA	14	Festuca alopecuroides 'Hamelin'	Dwarf Fountain Grass				#1 Cont.	30" o.c.

Large shade trees will be planted adjacent to the parking area and within the parking islands, as shown. Additionally large evergreen trees and under-story shrubbery will be planted

along the Emory Lane frontage between the proposed school and the road. Evergreen plantings have been added to the southern side yard to enhance screening from the adjacent historic site (the Nathan Shaw House/Muncaster Miller's House) located at 15910 Emory Lane.⁷

This supplementation of the landscaping was made following an observation by the Historic Preservation Staff that the proposed intensity of use called for in the above-referenced petition was out of character with the historic site's setting. After this addition to the landscaping, Historic Preservation Staff stated that it "recognizes that the applicants have revised their proposal to provide considerable greenscaping to mitigate any visual impact on the adjacent historic resource." Exhibit 27, attached e-mail of April 13, 2011, from Scott Whipple. Petitioner's site planner, Brian Donnelly, did not agree with Technical Staff's characterization of the historic house adjacent to the site as "a non-inherent adverse effect" because it is over 350 feet away, and therefore would not be impacted by the proposed use. Tr. 63-65.

The Hearing Examiner finds that, although proximity of the site to the historic Nathan Shaw House is a non-inherent site characteristic, any adverse effect that might have been created has been attenuated by distance and the additional screening to be provided by Petitioner.

One other issue was raised at the hearing concerning landscaping – Mr. Donnelly noted that the Fire Marshall wanted assurances that the evergreen buffer selected for the southern property line will not encroach into the 15-foot wide access to the rear of the buildings. The buildings are set back 20 feet from the property line and the trees are located in a five-foot strip at the property line, leaving the 15 feet of access sought by the Fire Marshal. Petitioner fears that the Fire Marshal's concern might result in some minor landscaping changes at subdivision that would then result in a delay while getting Board of Appeals approval, and a delay might prevent Petitioner from moving the school from its current location to the subject site in time to open for

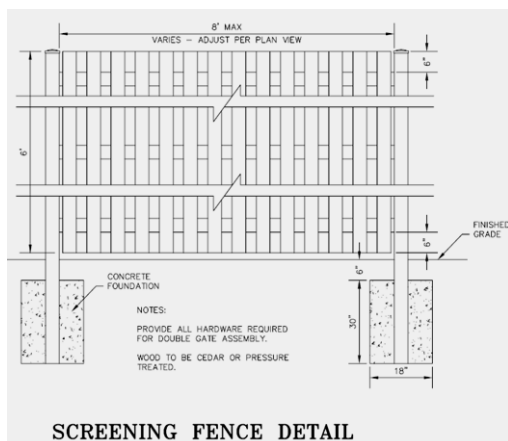
⁷ The house is listed in the Master Plan for Historic Preservation (#23/11).

the 2012 school year. Tr. 66-73.

Petitioner's counsel proposed a condition which would enable such a change without an administrative modification (Exhibit 41). Tr. 65-73. Petitioner's proposed condition, however, does not differentiate between minor and major changes to the plans. The version recommended by the Hearing Examiner would avoid further Board of Appeals review only if de minimis changes are made in the plans. This qualification is included as part of a condition which is required by Zoning Ordinance §59-G-1.21(a)(9) whenever subdivision is needed on a subject site. The condition recommended by the Hearing Examiner in Part V of this report is:

Petitioner must apply for Preliminary Plan review, per Chapter 50 of the Montgomery County Code. Since the proposed use will require subdivision, in accordance with Zoning Ordinance §59-G-1.21(a)(9), approval of this special exception is conditioned upon approval of a preliminary plan of subdivision by the Planning Board. The adequacy of public facilities will be determined by the Planning Board at the time of the Preliminary Plan review. If significant changes to the site plan or other plans filed in this case are required at subdivision, Petitioner must request modification of the special exception from the Board of Appeals. If a minor change in landscaping is required at subdivision to ensure adequate fire department access, and Technical Staff certifies that the change is de minimis and will not have any adverse impact on the abutting neighbors, Petitioner may submit a copy of the revised plans to the Board without formally requesting an administrative modification.

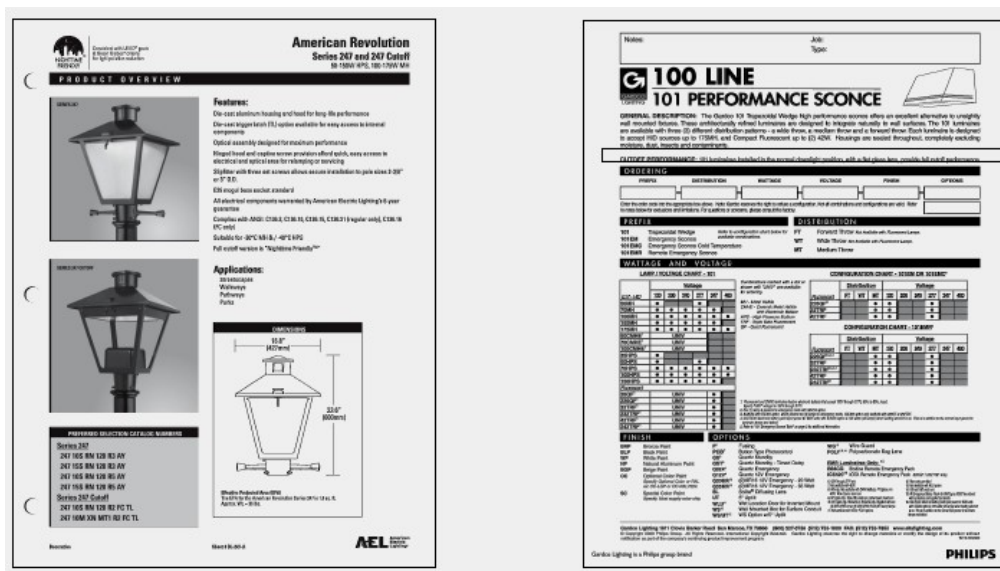
In addition to landscaping, two types of fences are proposed for the site. One type is a screening fence depicted in the Site Plan Details (Exhibit 22(m)), and the other is a four-foot, three rail, fence with a rustic look and a vinyl mesh to prevent children escaping the play areas, as depicted in the Landscape Plan Details (Exhibit 22(o)):

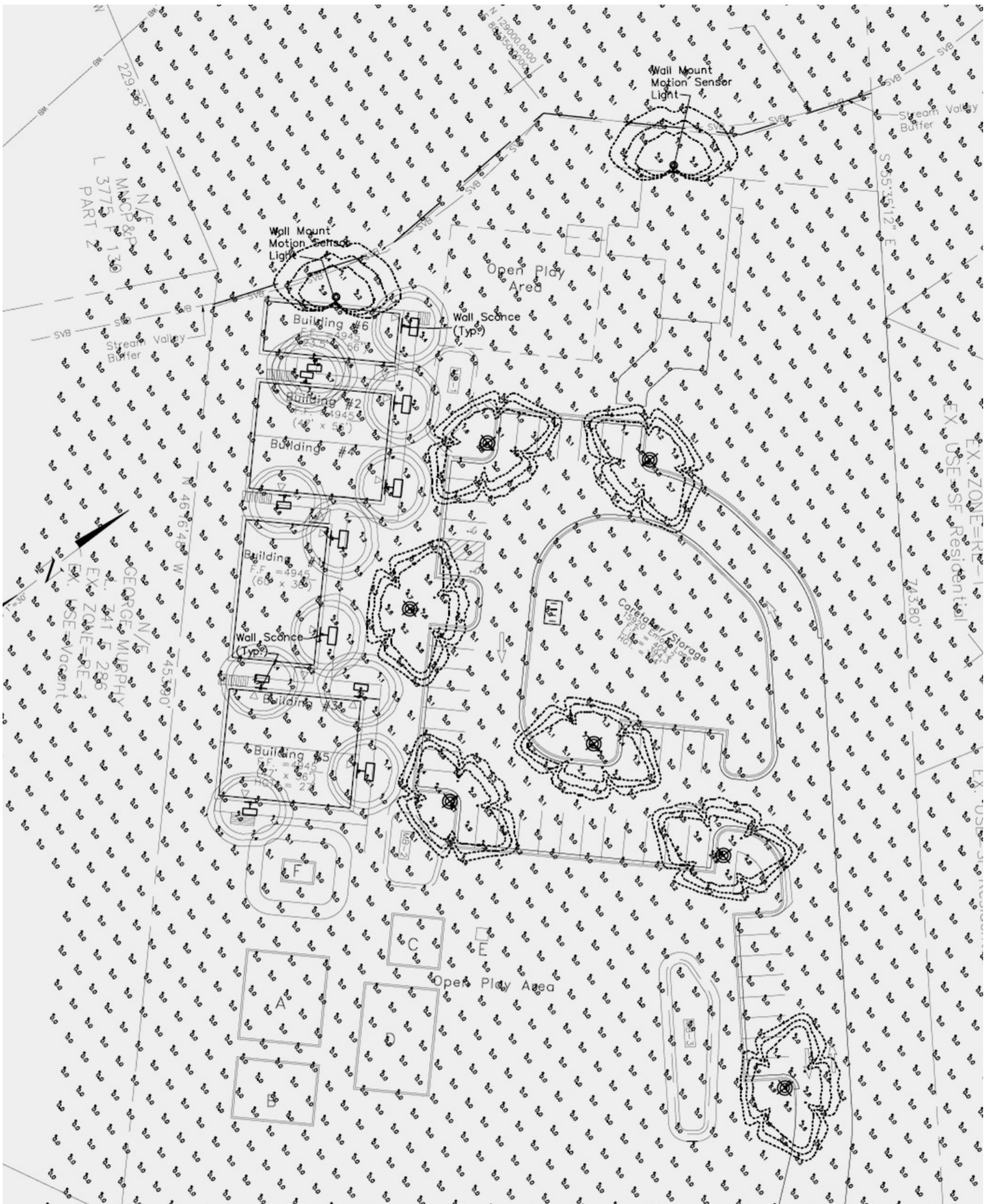


4. Lighting:

Proposed lighting will consist of architectural wall sconces mounted on the outside of the classroom buildings that will be controlled by photo sensors and will turn on and off automatically depending upon daylight/darkness. These will be located near the entranceways into the classrooms and along the exterior deck walkway to provide for the safety of children, teachers and parents, particularly during the winter months when some children will be picked-up after dark. In addition, small, residential-style light poles, not to exceed eight (8') feet in height, will be located along the perimeter of the parking areas, also to provide for safety after dark. These will also be photo sensor controlled lights. However, all parking area lighting will turn off automatically at 8:00 p.m. Additionally, motion-sensitive lighting will be installed on the rear of the existing barn and the western end of the westernmost building to provide additional security. Second Revised Statement of Operations (Exhibit 42(a), p. 5).

Petitioner produced both cut sheets for the lighting fixtures (Exhibit 16(b)) and a photometric study demonstrating that the proposed lighting will comply with the requirements of Section 59-G-1.23(h) and 59-G-2.19(b) of the Zoning Ordinance, and that lighting levels along the side and rear lot lines will not exceed 0.1 foot candles. Portions of the cut sheets are shown below, and the photometric study is reproduced on the next page:

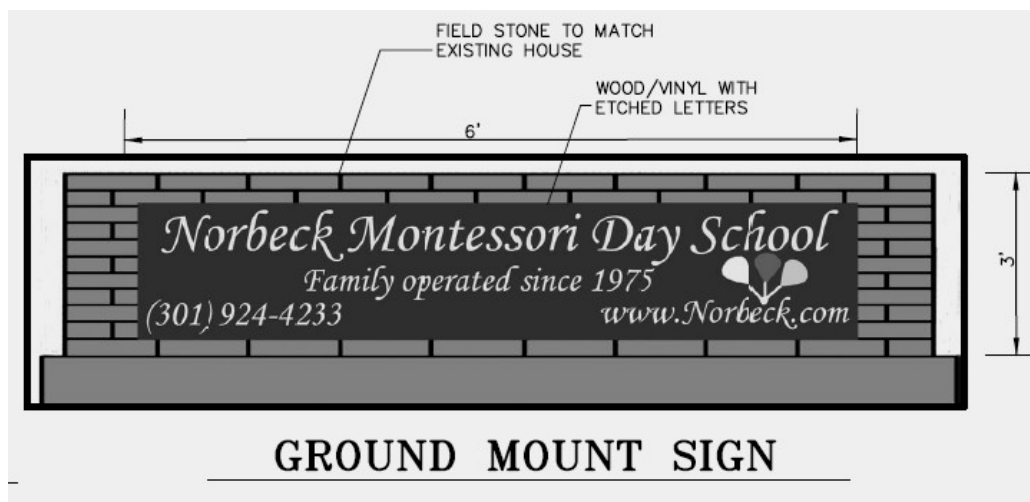




Technical Staff reports that “[t]he lighting plan adequately and efficiently covers the main vehicular access to the site, as well as the parking areas, in order to create a safe vehicular and pedestrian environment. . . . The proposed lighting will not cause glare on adjoining properties, nor will it exceed the 0.1 foot-candle standard at the side and rear property lines.” Exhibit 27, p. 12. There is no evidence to the contrary, and the Hearing Examiner so finds.

5. Signage:

Petitioner seeks permission to erect a single ground-mounted sign, measuring approximately three (3) feet tall and six (6) feet wide, to be located near the entrance. This sign will be constructed of wood or vinyl with a fieldstone base to match the existing residence and will not be illuminated. Second Revised Statement of Operations (Exhibit 42(a), p. 6). It is depicted in the Site Plan Details (Exhibit 22(m)), and that depiction is reproduced below:



Technical Staff indicates that “the proposed monument sign . . . meets the allowable size and setback requirements for places of assembly in residentially zoned areas.” Exhibit 27, p. 11. “Place of assembly” is defined in Zoning Ordinance §59-F-2 as, “Any place of worship, school, library, museum, or hospital. . . .” The proposed school therefore qualifies. The characteristics of

entrance signs for places of assembly in residentially zoned areas are controlled by Zoning Ordinance §59-F-4.2(a)(3)(B), which provides:

(B) Place of Assembly Location Sign. Additional sign area is permitted for a permanent location sign for any place of assembly. The sign must be a ground sign or a wall sign located at an entrance to the building or driveway to identify the location of the building for a user of the facility.

- 1. Number. Two signs are allowed at each entrance.*
- 2. Area. The sign area must not exceed 40 square feet.*
- 3. Placement.*

(i) Location. The sign must be set back at least 5 feet from the property line, or, if the driveway entrance to the subdivision is located in the right-of-way, a revocable permit issued jointly by the Sign Review Board and the appropriate transportation jurisdiction in accordance with Section 59-F-7.1(g) must be obtained to erect the sign.

(ii) Height. The sign must not exceed 26 feet in height.

4. Illumination. The sign may be illuminated in accordance with the requirements of Section 59-F-4.1(e).

Given the wording of the statute and Technical Staff's finding, the Hearing Examiner finds that Petitioner's sign proposal is appropriate. All signs placed on the property must meet the requirements of Section 59-F-4.2(a)(3)(B) in terms of number, location, size and illumination. Moreover, Petitioner must obtain a sign permit from the Department of Permitting Services and file a copy with the Board of Appeals.

6. Operations and Staffing:

As set forth in Petitioner's Second Revised Statement of Operations (Exhibit 42(a), pp. 7-8), there will be a maximum of 180 children (up from 160 at the current location) ranging in age from two to six years old and 34 full- and part-time employees (up from 30 at the current location). Hours of operation will be Monday to Friday from 6:30 a.m. to 6:30 p.m. Children do not arrive before 7:00 a.m., but employees arrive as early as 6:30 a.m. The main instructional period will be from 9:30 a.m. until 3:30 p.m., with a morning session between 9:30 a.m. and 12:30 p.m. and an

afternoon session between the hours of 1:15 p.m. and 3:30 p.m. Before and after-school care will be provided for working parents.

Outdoor play periods are scheduled by the classroom teachers and are somewhat dependent upon weather and other classroom activities. However, no children will play outdoors before 9:30 a.m., and children are always closely supervised during outdoor play. Regardless of the age group, a staff/child ratio of at least 1:10 is always maintained, even during outdoor play periods.

The program also includes summer sessions, which are run the same way as school-year sessions. All drop-off and pick-up will be done during the school hours, as will be discussed in more detail in the next section.

There are no regular delivery trucks coming to the facility. Trash will be picked up, twice a week, between the hours of 10 a.m. and -11 a.m., in keeping with the existing trash pick-up schedule for the school. Tr. 53.

The staff includes the director, the classroom teachers, the assistant teachers, the classroom aides and the office staff. All classroom teachers must hold a master's degree in Montessori education. The following chart from Exhibit A, attached to Petitioner's Second Revised Statement of Operations (Exhibit 42(a)), sets forth the number of staff anticipated to be on site at specified times.

Time	Staff for 180 Students
7:00 a.m.	3
8:00 a.m.	13
9:00 a.m.	23
10:00 a.m.	23
11:00 a.m.	24
12:00 p.m.	26
1:00 p.m.	27
2:00 p.m.	25
3:00 p.m.	21
4:00 p.m.	11
5:00 p.m.	6
6:00 p.m.	4

In a caption to this table, Petitioner states:

Currently there are a total of 30 staff members. We have 17 that we would consider “full-time” staff members (working 6 hours or more). The remaining 13 would be considered “part-time” and work varying hours. Below is a precise break out of staff by the hour. Going up to 180 students would cause us to add an additional 4 staff members.

As detailed in Petitioner’s Second Revised Statement of Operations (Exhibit 42(a), pp. 10-11), Norbeck Montessori Day School hosts five (5) events⁸ during the school year when parents are invited to come to the School for special activities. An off-duty police officer (the husband of a teacher) aids traffic control during these events. Tr. 119-121. They include:

1. Back to School Night. This is typically scheduled from 7:00 p.m. to 8:00 p.m. on a single weekday evening in the fall. It is anticipated that there will be no more than 70 vehicles and all parking can be accommodated on-site using the parking lot and designated overflow parking area.
2. Parent Night. This event is typically scheduled two (2) times during the year, once in the spring and once in the fall. There are two sessions scheduled on parent night; parents are assigned either to the early session, typically from 6:00 p.m. to 6:45 p.m., or to the later session, from 7:15 p.m. to 8:00 p.m. This scheduling allows parents from the early session to exit the School before the parents arrive for the later session. It is anticipated that there will be no more than 75 vehicles during each session and that all parking can be accommodated on-site using the parking lot and overflow parking area.
3. Halloween Parade. This event is hosted once per year during the fall, close to Halloween Day. It is typically scheduled from 9:30 a.m. to 10:30 a.m. and attendance is high. It is anticipated that there will be approximately 150 vehicles for this event. In order to ensure that adequate area is available on-site to provide parking for all parents attending this event, the School will require its Staff (approximately 30 vehicles) to park at an alternative, off-site location during the event and will make the necessary arrangements to transport Staff to and from the School. There is adequate space available on-site to accommodate the remaining 120 cars and during this brief period, vehicles will be permitted to park within the lawn area as well as within the parking lot and overflow parking area.
4. Mother’s Day Celebration. This annual event is typically scheduled from 9:30 a.m. to 10:30 a.m. during the month of May. Like the Halloween Parade, it is a popular celebration and it is anticipated that there will be approximately 150 vehicles for this event. The same parking accommodations proposed for the Halloween Parade will be employed during the Mother’s Day Celebration with Staff parking at an alternative, off-site location. The remaining 120 vehicles will be permitted to park within the lawn area as well as within the parking lot and overflow parking area.

⁸ Although the events are numbered 1 to 4, two of the events are included in Item 2.

7. Parking, Pick-up and Drop-off:

The site plan proposes 48 parking spaces and an on-site circulation system which includes a loop road with three student drop-off/pick-up areas, keyed to age. There will be one to the west side of the parking lot; one to the east side of the parking lot; and one at the center building. Tr. 47.

During the 9:10 a.m. to 9:30 a.m. drop-off period, the teachers will meet the children at those three drop-off points, and take the children directly to the classrooms. Most of the children are dropped off during that time. During the 12:10 p.m. to 12:30 p.m. pick-up period, the teachers will take the children to those three pick-up points, and assist them into the cars. The parents are not permitted to park during those periods. Tr. 103-105. The rest of the time, parents park and drop off or pick up their children, as shown on the following chart from Exhibit A, attached to Petitioner's Second Revised Statement of Operations (Exhibit 42(a)):

Time		Drop-off/ Pick-up	#'s based @180 Students	
Drop-off:			<u>Students Arriving</u>	<u>Teachers on site</u>
7:00 a.m. – 8:00 a.m.	Parent will park vehicle and escort children to building. (11% of students arrive at this time)		20	12
8:00 a.m. – 9:00 a.m.	Parent will park vehicle and escort children to buildings. (33% of students arrive at this time)		59	20
9:10 a.m. – 9:30 a.m.	Parent drives children to gates, staff escorts children to their classes. (56% of students arrive at this time)		101	21

Pick-up:			<u>Students Departing</u>	<u>Teachers on site</u>
12:10 p.m. – 12:30 p.m.	Parent pull up to the gate teacher assists children into their car and there is no parking. (19% of the students depart at this time)		34	26
3:30 p.m. – 4:30 p.m.	Parent parks and picks up children from inside the buildings. (49% of students depart at this time)		88	21
4:30 p.m. – 6:30 p.m.	Parent parks and picks up children from inside the buildings. (32% of students depart at this time)		58	11

The required number of parking spaces is determined by Zoning Ordinance §59-E-3.7:

Educational Institution, Private: One parking space for each employee, including teachers and administrators, plus sufficient off-street parking space for the safe and convenient loading and unloading of students, plus additional facilities for all student-parking.

Technical Staff determined that the proposed 48 parking spaces will be “sufficient to accommodate the parking needs of 34 employees (full and part-time) as well as parents and visitors. Given the age of children, 2 year-old to 6 year-old, there will be no need for accommodations for student parking.” Exhibit 27, pp. 10-11. As noted by Staff, arrival and departure times of both students and staff are staggered, which will also limit the demand for parking spaces.

According to the school’s Director, Keira Rakestraw, the system works very well at its current location. There are no parking problems there, and Petitioner will have more parking spaces at the proposed new location. She has never observed vehicles queuing up along Muncaster Mill Road, to get into the school's parking lot at the existing location. Also, staff do not arrive and depart at the same time. Because the day is so long, 11 hours, staff arrival is staggered. Tr. 106-109. At the request of the Hearing Examiner, Petitioner added the following language to in its Second Revised Statement of Operations (Exhibit 42(a), p. 11) to provide for alternative parking when capacity on site may be exceeded during special events:

In order to ensure that adequate area is available on-site to provide parking for all parents attending this event, the School will require its Staff (approximately 30 vehicles) to park at an alternative, off-site location during the event and will make the necessary arrangements to transport Staff to and from the School.

Given this record, the Hearing Examiner finds that parking proposed for the subject site will be adequate and will not create adverse effects on the neighborhood.

8. Traffic Volume and Safety:

The chief concern raised by the neighbors involved traffic volume and safety. Petitioner’s transportation planner, Michael Lenhart, addressed both of these issues. Tr. 123-149.

Mr. Lenhart prepared a traffic impact study dated January 13th, 2011 (Exhibit 11), in accordance with the Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR) requirements. Transportation Planning Staff asked him to study the intersection of Muncaster Mill Road, which is Maryland Route 115, at Emory Lane, and Emory Lane at the site access point.

In his LATR review, Mr. Lenhart found that both of those studied intersections will operate well within the critical lane volume (CLV) threshold that is required in the Olney policy area, which is a CLV of 1450. The intersection of MD 115 at Emory Lane will operate at a maximum CLV of 1238, and the site access on Emory Lane will operate at a maximum CLV of 873, even assuming an enlarged enrollment of 200 and a staff of 39. The actual increases in enrollment and staff will be to a maximum of 180 students and 34 staff.

Mr. Lenhart noted that a large portion of the current school traffic is already using Emory Lane through the studied intersections. When the new location opens, that traffic will stop along Emory Lane, instead of continuing to the existing site on Muncaster Mill Road (MD 115). Because of that, some traffic is actually eliminated from MD 115 at the Emory Lane intersection. Thus, that intersection will show a slight improvement, due to the removal of the traffic that would have continued on to the old location of the school.

The existing facility is located in the Aspen Hill policy area, which requires 15 percent mitigation under PAMR. The proposed site is located in the Olney policy area, which requires a 10 percent mitigation. Staff required that the traffic be considered all new traffic to the Olney policy area, which would amount to 18 new trips, based on 180 students, and call for a mitigation of two trips (10 % of 18). The mitigation issues will be addressed at the time of subdivision.

Mr. Lenhart further testified that the Inter-County Connector was not open at the time he did his original traffic impact analysis. Phase one of the ICC opened in February of 2011. With

or without the ICC, the studied intersections would meet the CLV standards for the policy area.

After the ICC opened, Mr. Lenhart did a follow-up study at the intersection of Muncaster Mill and Emory Lane on March 24, 2011, because of community concerns about traffic volumes on Emory Lane. He found that the traffic on Emory Lane had reduced by about 10 percent. Traffic on Muncaster Mill had reduced by 25 percent. These findings are included in a memorandum dated March 24, 2011 (Exhibit 22(c)).

Because of the neighbors' concerns about traffic backups, Mr. Lenhart also analyzed traffic queues on Emory Lane at its intersection with Muncaster Mill Road. He observed queuing averaging 200 to 400 feet on Emory Lane at Muncaster Mill Road, primarily from 7:30 to 8:30 in the morning. That is the peak hour at that intersection. The queues fluctuated and dissipated quickly, sometimes leaving no backups at all. The maximum he observed was 500 feet, which would be about 20 cars, but it did not reach Petitioner's southern property line. Since the proposed entrance is about 1,000 feet north of Muncaster Mill Road, the queue did not approach where the new driveway will be.

The opening of the ICC improved the intersection by reducing the traffic volumes both on Emory Lane and Muncaster Mill Road, creating more gaps in traffic on Muncaster Mill. Queues before the ICC opened were a little bit higher because the smaller gaps in traffic on Muncaster Mill kept people on Emory Lane waiting longer for opportunities to enter Muncaster Mill. Now there are more gaps on Muncaster Mill, so the Emory Lane traffic can flush out more quickly.

Mr. Lenhart also noted that the peak flows occur on Muncaster Mill and Emory between 7:30 to 8:30 in the morning, while the peak periods for the school are from 9:10 to 9:30, which is after the peak of commuter traffic. The traffic on Emory Lane and Muncaster Mill actually drops off quite a bit after 9:00. In his opinion, adding a school to the new location is not likely to result in a larger queue. In fact, because parents no longer have to come down Emory all the way to

Muncaster Mill, they would not enter the queue, and the demand at that intersection should diminish.

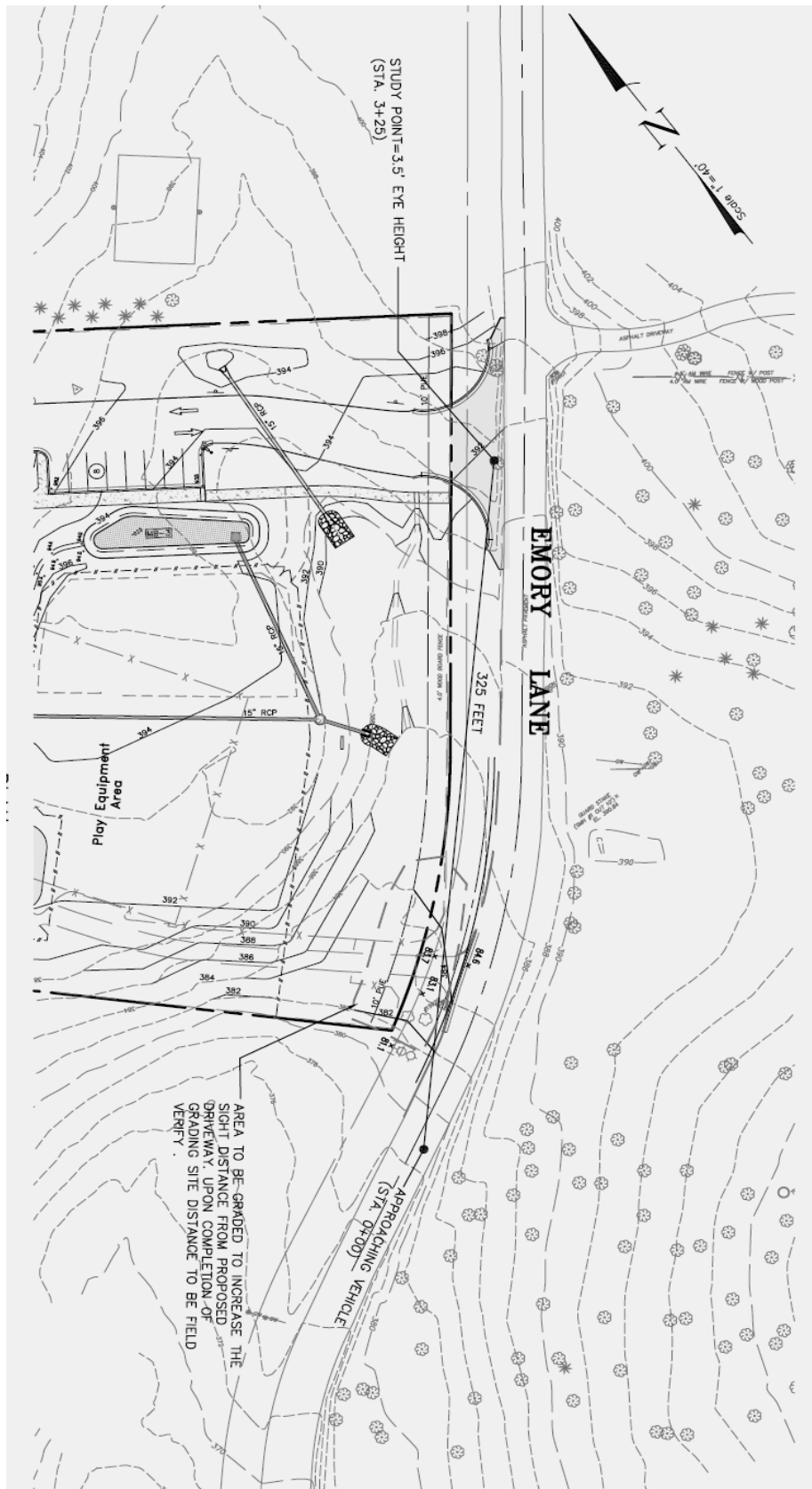
Mr. Lenhart addressed safety concerns by doing a study to determine whether there will be a safe sight distance for vehicles entering or exiting the proposed driveway, applying Montgomery County Department of Transportation standards for sight distances. Those standards are based on design guidelines issued by the American Association of State Highway and Transportation Officials (AASHTO).

Emory Lane is a two lane arterial road with an 80-foot right-of-way in the Olney Master Plan. There is a curve in Emory Lane to the south of the property, and there are some side slopes and some trees to the north side of the property which block sight distance in that direction. It has a posted speed limit of 30 miles per hour, but Mr. Lenhart did a speed study to see what the prevailing speeds are and what the design speeds actually should be. He found that average speeds in both direction were 35 to 36 miles per hour, and the 85th percentile speed was 39 miles per hour in both directions.

According to Mr. Lenhart, the 85th percentile speed is, in engineering principles, generally the speed that would be set as the design speed of the roadway. He rounded it to 40 miles per hour, and then looked at the sight distance design requirements for a 40 mile per hour roadway. Montgomery County requires 325 feet minimum sight distance for an arterial roadway with a 40 mile per hour design speed. By removing some of the trees from the site and regrading on the site, Petitioner can achieve about 600 feet of sight distance to the north, far in excess of the design guideline.

To the south, a fence will be moved and the site will be graded down removing a knoll that causes a sight blockage from the new driveway location. Both of those measures will improve the sight distance to the south, and it will then meet or exceed the County requirements, as shown in

the following Sight Distance Plan (Exhibit 22(e)):



In Mr. Lenhart's professional opinion, the proposed new driveway location will be safe, and there will be adequate sight distance for vehicles.⁹ He also opined that the proposed on-site circulation pattern will be safe and efficient, and there is more than adequate area for queuing, stacking and parking for all activities. The site will be safe for both vehicular and pedestrian traffic.

In Mr. Lenhart's opinion, the intensity and character of the proposed use will not have an adverse impact upon traffic, and it can be operated in harmony with the general character of the neighborhood. The proposed use will also satisfy requirement that there be adequate public facilities, including roads, to serve the proposed school.

Technical Staff found it reasonably probable that the application will satisfy LATR and PAMR requirements, but noted that a final determination on whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards will be determined at the time of subdivision. Exhibit 27, p. 8.

Staff also observed that Petitioner will modify grades along frontage to achieve the required sight distances. Staff concluded that (Exhibit 27, p. 8),

... with improving the sight distance, the proposed access point is adequate to accommodate the site-generated traffic. Staff has also reviewed the proposed internal traffic/pedestrian circulation system including on-site queuing and stacking area shown on the site plan and finds them to be adequate.

Staff recommended the following transportation related conditions for the future preliminary plan of subdivision (Exhibit 27, pp. 8-9):

1. Total proposed Private Educational Institution is limited to 180 children and 34 staff.
2. Prior to release of the building permit, the applicant must modify grades along Emory Lane frontage to achieve the Montgomery County Department of Transportation (MCDOT) required sight distance.

⁹ Petitioner is not proposing any improvements to Emory Lane itself because the County has plans eventually to relocate and realign it to a 90-degree angle to Muncaster Mill Road, taking that S-curve out of it and improving the roadway to a larger arterial road. Tr. 44-45.

3. The applicant must make a lump sum payment of \$22,600 prior to obtaining the building permit to mitigate the PAMR required 3 peak-hour trips.¹⁰

Based on this record, the Hearing Examiner finds that it is reasonably probable that Petitioner will satisfy the Growth Policy standards (LATR and PAMR) at subdivision. Moreover, based on the volume and queuing analysis performed by Mr. Lenhart, the Hearing Examiner finds that Petitioner has demonstrated that the relocation of the Norbeck Montessori Day School to Emory Lane will not create traffic volume compatibility problems for the general neighborhood. In addition, the Hearing Examiner finds that Petitioner has appropriate proposals for dealing with the sight distance safety issues, which will be further studied and finalized at subdivision.

9. Environment:

Technical Staff indicated that there is a 0.49-acre forest on site and there are twenty-nine large or specimen trees located on or adjacent to the property. The property contains area within the environmental buffer and there are large wetland areas and a floodplain located adjacent to the property; however, there are no wetlands or 100-year floodplains located on the property, and the site is not located within a Special Protection Area (SPA) or Primary Management Area (PMA). Environmental Planning Staff memorandum of April 26, 2011, attached to Exhibit 27.

Petitioner's Preliminary Forest Conservation Plan (Exhibit 22(p)) and tree variance were approved by the Planning Board. Exhibit 34 and Tr. 55-56.

One neighbor, Mr. Olszewski, raised a concern about whether this proposed use would have an adverse impact on the immediate environment because of the proximity of the parking to the watershed. Petitioner's site designer, Brian Donnelly, testified that Petitioner had submitted a stormwater management concept plan to the Department of Permitting Services, and that Plan will meet or exceed the State of Maryland's new environmental design criteria. Review and approval

¹⁰ There is a typo on page 9 of the Staff report (Exhibit 27), which incorrectly refers to a mitigation of 3 trips, when

will be handled as part of Subdivision. According to Mr. Donnelly, there should be no adverse impact to the environment, based on the stormwater management control and the amount of imperviousness provided within the site constraints. Tr. 57-60.

Environmental Planning Staff stated it “finds nothing inherent in the operation of the proposed use that would be considered objectionable . . .,” so long as County regulations are followed. Environmental Planning Staff memorandum of April 26, 2011, attached to Exhibit 27.

Based on this record, the Hearing Examiner finds that there are no environmental issues which should result in the denial of this petition.

E. Community Response

Three letters of opposition (Exhibits 15, 19 and 30)¹¹ and ten letters of support (Exhibits 20, 21, 25, 26, 28, 29, 31, 32, 33 and 36) have been received from the community. The letters in opposition mostly raise concerns about traffic safety and volume on Emory Lane. The letters in support mostly extol the virtues of the school, which has been operating at nearby locations for 37 years. Only two witnesses from the community testified at the hearing, one of whom was the confronting property owner. Both supported of the petition.

The community concerns about traffic volume and safety were addressed at length in Part II. D. 8 of this report. Both the issues of appropriate sight distances along Emory Lane and the adequacy of public transportation facilities at this location will be thoroughly reviewed at subdivision, where the final decisions on those matters will be made. However, based on the record discussed herein, the Hearing Examiner finds that Petitioner has appropriately addressed neighbors’ legitimate concerns, and they do not warrant denial of the subject petition.

clearly they meant 2, since they correctly indicated the required payment of \$22,600 (2 X \$11,300 per trip).

¹¹ The letter from Michele Kanner, on behalf of the North Creek Civic Association (Exhibit 30), notes that they are not opposed to the petition, *per se*, but they feel that it should not be permitted absent road improvements.

III. SUMMARY OF THE HEARING

Petitioner called five witnesses at the hearing, Wyatt Bissett, part owner of the Petitioner and the entity which owns the subject site; Keira Rakestraw, Director of Norbeck Montessori Day School; Brian Donnelly, a site planner and landscape architect; Tim Daniel, an architect; and Mike Lenhart, a traffic engineer. Two witnesses from the community, John Powers and Marie Lisa McKillop, testified in support of the petition. There were no opposition witnesses.

At the beginning of the hearing, Petitioner's attorney, Sue Carter, noted that the Petitioner, the Norbeck Montessori Day School, is a corporate entity that's wholly owned by the Bissett family. They currently operate a private educational institution on Muncaster Mill Road, but it does not have a special exception today because it is on a church-owned property and it doesn't require one. The property is owned by the Church of the Nazarene. Petitioner has been on this property for 37 years, but the Church of the Nazarene has decided they want to do something else with their property, and the lease is terminating in August of 2012. A new location for the school therefore had to be found. Tr. 8-9, 13-14.

Ms. Carter also indicated that while Technical Staff's definition of the neighborhood was "a little bit expansive," Petitioner found it "acceptable." Tr. 10-11. Ms. Carter introduced Exhibit 40, a rendered version of the Landscape Plan (Exhibit 22(n)), and noted that Petitioner has labeled the proposed buildings as one through six, although Technical Staff refers to only four new buildings because Buildings 2 and 4 are attached, as are Buildings 3 and 5. Tr. 12-13.

A. Petitioner's Case

1. Wyatt Bissett (Tr. 17-30) :

Wyatt Bissett testified that he is the owner of the Norbeck Montessori Day School Inc., along with his son and daughter-in-law. He currently operates the school at 4500 Muncaster Mill

Road, Rockville, Maryland 20853, and has been there for 30 years. Before that, the school was next door for seven years. The school's lease terminates on the last day of August 2012.

Dr. Bissett described the property on Emory Lane as perfect for the school and "it's in our neighborhood." Tr. 19. The site will also provide Petitioner with more land. The new site is owned by a family corporation. Dr. Bissett testified that as a director of the LLC which owns the land, the LLC gives permission to the school to operate the school on the property that's owned by the LLC. [The Hearing Examiner asked Ms. Carter to also file a paper indicating that the entity owning the land intends to give permission for the school to operate there.]

Dr. Bissett described Petitioner's outreach to the community regarding this project, which included meetings and door-to-door exchanges. He testified that, if the special exception is approved, he will be responsible for ensuring that the use operates in accordance with all terms and conditions of the approval. Dr. Bissett also agreed to the conditions that were recommended by the Technical Staff and adopted by the Planning Board.

2. Brian Donnelly (Tr. 35-90; 119-120; 122):

Brian Donnelly testified as an expert in landscape architecture and site planning. He described the site and the surrounding neighborhood. Mr. Donnelly feels that the general neighborhood, as described by Technical Staff is a bit large, but he accepts it. Tr. 38-39.

Mr. Donnelly noted that the property is presently an unrecorded lot. Petitioner is in the process of taking the site through the subdivision process in order to get a buildable parcel. As part of that subdivision, there will be a dedication of about .23 acres to the future Emory Lane. Tr. 42.

The current driveway is on the south side of the property, just south of the existing riding stable area. The driveway is being relocated from the south side of the property to the north side of the property to get it to the high point of the site and further away from that curve in the road ,

to get as much visibility to the south as possible, toward the Muncaster Mill Road intersection. The sight distance is a complicated problem because there is a horizontal and a vertical grade change. Tr. 43-44.

Part of the subdivision process will be to regrade the property on that south side on site in order to get sight distance further to the south to meet the arterial road requirements. Petitioner is not proposing any improvements to Emory Lane itself because the County has plans eventually to relocate and realign it to a 90-degree angle to Muncaster Mill Road, taking that S-curve out of it and improving the roadway to a larger arterial road. Tr. 44-45.

Mr. Donnelly, referring to the rendered landscape plan (Exhibit 40), stated that the lighter brown areas are the two existing structures that remain. The L-shape structure in the center of the rendering is the existing house which will be used either as a caretaker or as storage for the school. The building on the back half of the property, which is almost like a backward F, is the existing barn that will be used as a garage for the caretaker's house. There will be one car in the garage and two cars in the gravel driveway access in front of the garage. The existing pool that's immediately to the south of the existing barn will be removed.

The stream valley buffer is the lighter green area to the west side of the site. The dark line that's differentiating between the two green colors is the approximate stream valley buffer. There's a shed presently in the stream valley buffer that will be removed. The new construction will include four new structures, containing six classrooms, located along the south of the property. Petitioner located the buildings along the south of the property in order to maximize the separation from the adjoining residential subdivision to the north. The historic house further south is about 300 feet away, and Mr. Donnelly feels that is an ample separation between the two uses.

The proposed access road comes up and terminates on itself. It's a loop road. The portion of the loop that's surrounding the house is going to be a one-way drop off area. There will be three points of drop off, based on the age of the children. There will be one to the west side of the parking lot; one to the east side of the parking lot; and then, one at the center building. The teachers will meet them at those three drop off points, and take the children directly to the classrooms.

In Mr. Donnelly's opinion, all of the proposed improvements will satisfy the development standards of 59-G-1.23(a), which are the standards applicable to development in the RE-1 zone, as shown in the table on page 10 of the staff report. The plans will also meet all the requirements of the RE-1 zone and the special exception requirements in section G. Tr. 45-48.

Mr. Donnelly further testified that, as it currently exists, even in its unimproved status, the sight distance for the planned driveway meets the applicable DOT's c and AASHTO standards, and it will meet the applicable standards once the road is improved into an arterial by the County. Tr. 48-49.

Petitioner plans 48 total parking spaces to be provided on site. Forty-five have been assigned to the school, and three spaces for the caretaker's house, two in the driveway and one in the garage. The 45 spaces on site satisfies the minimum parking requirements for a private school as provided in 59-E-3.7, which is one space per employee plus sufficient parking for loading and unloading of students. Up to 34 teachers could be on site at any given time, and some additional spaces were assigned for drop off and loading. Petitioner also provided an area for overflow parking for special events, which is shown on Exhibit 40 as the darker green grass area immediately to the east of the existing house, and just south of the new driveway, in a play area. Tr. 49-50.

There are essentially two play areas. One is to the west, and is bordered by the stream valley buffer, the existing barn and classroom number one. That area is about a quarter acre. That will be fenced with a three rail board-on-board fence with wire mesh. The other playground is on the east side of the proposed classrooms and parking, and immediately to the west of Emory Lane. That playground area is about a half an acre. It's also going to be entirely fenced with a split rail fence, which will be sufficiently secure with mesh to prevent children from wandering off the property. Within the larger play areas, there will be a couple of small play areas that are set up for the different use groups, and with play equipment typically associated with the various use groups for climbing and jumping, swings and the like. Tr. 50-52.

The dumpster will be located on the north side of the property that will have pickup twice a week for trash, and once a week for recycling. The trash pickup will between 10:00 and 12:00. As far as screening, there is an existing board-on-board fence that's along that north property line. There's a section of fencing that's chain link that will be replaced with board-on-board, so there will be a continuous board-on-board fence along that north property line. There are some existing evergreen trees along the adjoining property of the north property line that will be supplemented where there are openings in the fence to screen the views. The headlights on the cars won't shine into the back yards of nearby residences because of the grade differential. Tr. 52-53.

A preliminary forest conservation plan was approved by staff and the Planning Board, as well as a tree variance, which allows Petitioner to grade within the critical root zone of an existing 36-inch maple on site. Tr. 55-56.

Mr. Olszewski raised a concern about whether this proposed use would have an adverse impact on the immediate environment because of the proximity of the parking to the watershed. Mr. Donnelly noted that Petitioner had submitted plans to Department of Permitting Services for storm water management concept which will be meeting or exceeding the State of Maryland new

environmental design criteria. Approval will be handled as part of subdivision. According to Mr. Donnelly, there should be no adverse impact to the environment, based on the storm water management control and the amount of imperviousness provided within the site constraints. This property is not in a special protection area. Tr. 57-60. The April 26, 2011 memorandum from Technical Staffer Frederick Vernon Boyd is referring to a different property with regard to the Master Plan. Tr. 61-62.

Mr. Donnelly further testified that the proposed landscaping consists of mixed hard woods to provide shade, evergreen plantings for screening and year round seasonal interest, and some shrubs and accent plantings around the main entrances and doorways. The most significant part of the landscaping is the evergreen plantings, both on the north and the south side, to provide buffer and screening to adjoining properties. Tr. 63.

Mr. Donnelly did not agree with Technical Staff's finding that the historic house adjacent to the site is a non-inherent site characteristic because it is over 350 feet away, and therefore would not be impacted by the proposed use. Tr. 63-65.

Mr. Donnelly noted that the Fire Marshall raised concerns about the evergreen buffer on the southern property line. The buildings are set back 20 feet from the property line and the trees are located in a five-foot strip at the property line, leaving the 15 feet of access sought by the Fire Marshal. However, it is possible that their concern might result in some minor changes at subdivision if there is a fear of the trees growing into the 15-foot access area. [Petitioner's counsel proposed a condition which would enable such a change without an administrative modification (Exhibit 41)]. Tr. 65-73.

Mr. Donnelly further testified that the two primary objectives of Zoning Ordinance §59-G-1.23(h) are to ensure that there's no glare or spillage on the adjoining properties, and that the proposed lighting meets 0.1 foot candles at the rear and the side property lines. Petitioner has

done that. The photometric study show that it does not exceed the .1 foot candles. In addition, Petitioner proposed photo voltaic cells that would turn off the lights at 8:00 PM. The poles themselves are mounted on residential type fixtures to be compatible with the neighborhood and compatible with the residential feel and character of the area on just eight-foot poles. There would security lighting on the west side of building one and along the rear of the four buildings facing south, with a motion detector that would come on, should there be an intruder. Those lights would be pointed down to the ground at a 90-degree angle, so they would not cause any spillage or glare to the adjoining properties. Tr. 73-74.

Addressing public utility services, Mr. Donnelly testified that the subject property is categorized in a W-1 and S-1 water and sewer categories, but the residence itself is presently under a septic field. As part of this development, Petitioner will be bringing a public sewer extension from Muncaster Mill Road approximately 600 feet up Emory Lane. The proposed development would not require a category change, and Petitioner has submitted a phase one authorization to WSSC for that new service. The existing facility is being served by public water from Emory Lane. The other public services and facilities (police, fire, transportation) are adequate to serve the property. Tr. 75-76.

Mr. Donnelly testified that a small ground mounted sign with small flood lights will be added, and any new signage will meet the requirements of 59-F-4.2(a)(3)(B) for permanent signage for a place of assembly. [Petitioner's attorney indicated that, in fact, the sign would not be lighted.] Tr. 76-77.

[The Hearing Examiner asked Petitioner's counsel to amend the statement of operations to say how many activities are planned during the year and the expected number of attendees for those activities. Tr. 79-82.]

Mr. Donnelly opined that the proposed use complies with the special exception requirements in the Zoning Ordinance. Tr. 83-90.

Mr. Donnelly testified that the 2005 Olney Master Plan is applicable to this site. There was no specific guidance provided within the Master Plan for this property, or within the southern portion of the Master Plan. The only references are regarding special exception approval, which require compatibility for height, size, scale, traffic and visual impact from structures or parking, and avoiding excessive imperviousness. Based on that criteria, Mr. Donnelly opined that Petitioner met or exceeded the requirements. The proposed imperviousness is around 20 percent, and the existing imperviousness is around 15 percent, so it's a fairly moderate increase over the existing conditions. Tr. 83-84. The proposed development is generally residential in character with scale and massing similar to a residential structure. The grouping of the buildings have the appearance from the street of being basically one structure, so the impact from Emory Lane is very minimal. There will be vegetative screening and physical separation between the adjoining residential properties, so Petitioner has met the criteria for harmony and character within the neighborhood. There is nothing about the proposed use that will be detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties, or the general neighborhood. This proposed use is actually compatible within this neighborhood. It's a low intensity use and draws significantly from a residential population. This development will not generate any noise, vibration or fumes, odor, dust or lighting, that would be detrimental. There are only two special exceptions that have been approved within the area. So there's no saturation of existing special exceptions. Tr. 84-86.

According to Mr. Donnelly, the proposed density of students is well below the allowable. The density standards are 87 students per acre allowable (*i.e.*, a total of 415). Petitioner is proposing 36 students per acre (*i.e.*, a total of 180). The sight distance along Emory Lane meets

the criteria for an arterial road in the AASHTO standards. In Mr. Donnelly's opinion, the proposed new classrooms are architecturally compatible with other buildings in the surrounding neighborhood. The buildings will be residential in character, having similar massing, height, and integration and use of residential building materials, to make it compatible with the adjoining property. Play areas have been located to the rear of the property and to the front part of the property, to the east. There will be a limited number of students out at the playground at any given time, based on the age groups. So there will be no significant noise generated. The summer program that's offered by the school is essentially operated in the same manner as the regular program during the academic year. The school does not allow its facilities to be leased for other types of activities such as tutoring, college entrance exams, art education, or artistic performances. The site plan is consistent with or exceeds the requirements of 59-G-2.19(d). Tr. 87-90.

Mr. Donnelly further testified that there is an adequate area, incorporating the overflow parking area and other areas on the site, to accommodate situations where there would be in the neighborhood of 150 cars, if staff parked off-site. When the number of vehicles would be approximately 75, there would be enough space in the overflow parking to handle the additional 30 cars without any dislocation of staff. Tr. 119-122.

3. Timothy Daniel (Tr. 91-97):

Timothy Daniel testified as an expert in architecture. His primary objectives in design of the proposed new school were, first of all, to create a building whose scale and character is in harmony with the surrounding residential, quasi-rural character of the surrounding neighborhood, and also to ensure a safe and efficient operation of the school.

These were accomplished by retaining the existing house on the site to ensure that continued residential feel; setting the buildings back from Emory Lane to respect the sight

distance that is typical throughout the area; maintaining a distance away from the adjacent residences that are to the north of the site; and also by building frontage to have primarily residential character, and to relate distinctly with the existing residential building on the site.

The buildings are comprised of four distinct masses of residential scale, that are aligned along the south property line. They're all one-story structures similar to the existing house. They are also organized along the site to follow the contour lines along that south property line to minimize disruption of the existing grades, and to set the buildings at an elevation that is lower than the existing house so that as viewed from Emory Lane, the existing house has primacy. It's actually taller than the school buildings will be. Also the materials used at that portion of the building relate to the existing house in terms of the texture and the color. Some of the roof massing consists primarily of gable forms with dormers facing Emory Lane. And the buildings are connected by continuous walkways that are covered and have a porch appearance.

In Mr. Daniel's opinion, the proposed structures satisfy the requirements of §59-G-1.23(g) of the Zoning Ordinance that they must be well-related to the surrounding area in their siting, landscaping, scale, bulk, height, materials and textures, and must have a residential appearance where appropriate. They will also be architecturally compatible with the surrounding development, in accordance with Section 59-G-2.19(a)(2).

4. Keira Rakestraw (Tr. 98-121):

Keira Rakestraw testified that she is the Director of the Norbeck Montessori Day School, and has been with the school for 15 years. At a Montessori school, the children work at their own pace, their own readiness level, their own interest level, and the school takes them as quickly or as slowly through learning material as they need to go or want to go.

The school will be operated in the exact same manner at the new site, with an enrollment increase from 160 to 180. Petitioner would increase the number of staff from approximately 30 to

a maximum of 34. The hours of operation and the academic summer program, the drop off, pickup, all of that, will operate in the same manner that it does today. The ages of the students are as young as two and go through kindergarten, so some are as old as six. The school is open 7:00 a.m. to 6:00 p.m. Monday through Friday, but teachers arrive as early as 6:30 a.m. The typical academic day is from approximately 9:00-9:30 to about 3:30, and then Petitioner provides before and after care for those families that have full-time working parents.

Ms. Rakestraw described operations. From 7:00 to 9:00, parents park and walk their children into the school. From 9:00 to 9:30, the parents do not get out of the car. By 9:30, once that drop off line has ended, typically all of the kids are there. The majority of the children are dropped off during that drop-off time.

Some of the children go home for lunchtime and the rest of the day. The majority of them will stay all day. But for those that leave at lunchtime, Petitioner does the opposite of the drop off line, so the parents are not allowed to park between 12:10 and 12:30. Petitioner has all the children that go home during that time outside together with a teacher. The children are put into the car and the parents continue on their way. Petitioner also has a scheduled pickup time at 3:30. The parents will park, enter the classrooms at that time, pick up their child, and escort them to and from the cars. Petitioner has another stepped pickup time at 4:30 when another academic program ends, and then again the parents park, come in, get their children and walk them back to the car. Then scattered throughout the rest of the afternoon, between 4:30 and 6:00, parents come through that time to pick up their kids.

According to Ms. Rakestraw, the system works very well. The reason for the drop off line and the pickup line is for safety purposes, because that is the busiest time, rather than having cars backing in and out of parking spots with children walking through a parking lot, this minimizes the danger involved. There is no bus system. All come by car, the majority from the Olney and

Rockville areas. Most are coming down Emory Lane from the north to Petitioner's location, so it would not change once Petitioner relocates. Sometimes there is more than one student per car.

There are no parking problems at the current location, and Petitioner will have more parking spaces at the proposed new location. She has never observed vehicles queuing up along Muncaster Mill Road at the existing location, to get into the school's current parking lot. Also, staff do not arrive and depart at the same time. Because the day is so long, 11 hours, Petitioner has staff that come in the early part of the morning, and then might leave early afternoon. Another group comes in periodically throughout the afternoon. There would be about 26 staff on site at a time, because of the staggered arrivals and departures, but during a meeting it could be up to 34. Tr. 106-109.

The school operates during the summer months with the same hours and the same staggered arrivals and departures as during the regular year. Typically, the summer enrollment is a little bit less because it's a camp. Other than the summer program, the Norbeck Montessori School does not propose to operate or to allow its facilities to be leased for any purposes such as tutoring, college exam prep courses, art education programs, artistic performances, indoor and outdoor recreation programs, or summer day camps offered by others.

The school does host special events that would take place outside of the regular hours. Petitioner hosts a back to school night one time per year. If Petitioner has full enrollment of 180, there would be about 70 sets of parents attend back to school night from 7:00 to 8:00 p.m. The Mother's Day event is from 9:30 to 10:30 a.m., and every mom attends. Petitioner would expect probably 150 cars during that. There is a Halloween parade and song-fest that would take place in the morning during the regular school day, and Petitioner would anticipate about 150 cars on that day as well. The only other events that take place would be two parent nights throughout the year, one in the spring and one in the fall, and Petitioner divides those into two sessions on each

night. After school hours, one session is 6:00 to 6:45 p.m., and about half of the population attend. It's one parent, so either the mom or dad comes. The other half of the population would come for the second session. It is from 7:15 to 8:00 p.m. Approximately 75 cars arrive during each session. Petitioner leaves enough time between each session for the first group to empty out safely before the next group comes in.

Petitioner has a waste management service come twice a week to collect the dumpster, and the recycle company come once a week. The school does not receive routine deliveries. Children pack their own lunch. Petitioner does offer an optional hot lunch that they can choose to purchase twice a week, and that's just brought in by someone in their car from a local restaurant.

In Ms. Rakestraw's opinion, as director, there is nothing about the operation which would be detrimental to the use or development of the surrounding properties; nor anything about the use that might cause objectionable noise or vibrations, fumes, odors, glare, or physical activity. Also nothing about the use would adversely affect the health, safety, security, or welfare of residents, visitors, or employees.

Ms. Rakestraw further testified that during some of the larger special events, the husband of one of Petitioner's teachers, who is a Montgomery County Police officer, volunteers his time to let traffic safely exit the property. That system will continue. Petitioner would also be willing to accept a condition that during Mother's Day and the Halloween parade, staff would be required to park off site and be transported to the property so that parking would be opened to accommodate more parents. Petitioner currently parks in the lot next door, which is at the Chinese Bible Church, and they could potentially still park there and car pool. Petitioner has a teacher with a van who will wait for several teachers to arrive, and then bring them to the new location. Tr. 119-121.

5. Michael Lenhart (Tr. 123-149):

Michael Lenhart testified as an expert in traffic engineering and transportation planning. Mr. Lenhart prepared a traffic impact study dated January 13th, 2011 (Exhibit 11), in accordance with the Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR) requirements. Transportation Planning Staff asked him to study the intersection of Muncaster Mill Road, which is Maryland Route 115, at Emory Lane, and Emory Lane at the site access point.

Mr. Lenhart found that both of those studied intersections will operate well within the critical lane volume (CLV) threshold that is required in the Olney policy area, which is a 1450. The intersection of 115 at Emory will operate at a maximum of 1238, and the site access on Emory Lane will operate at a maximum of 873 CLVs, even assuming an enlarged enrollment of 200 and a staff of 39. The actual increase will be to a maximum of 180 students and 34 staff.

Mr. Lenhart added that a large portion of the school traffic is actually to and from the north on Emory Lane. Since a lot of the traffic already comes down Emory Lane and through these intersections, it becomes diverted traffic, that goes to the new site, instead of continuing to the existing site. Because of that, some traffic is actually eliminated MD 115 at the Emory Lane intersection. Thus, that intersection will show a slight improvement, due to the removal of the traffic that would have continued on to the old location of the school. In other words, transferring the location of the school reduces the number of cars that are going to go further south on Emory Lane.

The existing facility is located in the Aspen Hill policy area, which requires 15 percent mitigation under PAMR. The proposed site is located in the Olney policy area, which requires a 10 percent mitigation. Staff required that the traffic be considered all new traffic to the Olney

policy area, which would amount to 18 new trips, based on 180 students, and require a mitigation of two trips (10 %).¹² The mitigation issues would be addressed at the time of subdivision.

Mr. Lenhart further testified that the Inter-County Connector was not open at the time he did his original traffic impact analysis. Phase one of the ICC opened in February of 2011. With or without the ICC, the studied intersections would meet the CLV standards for the policy area.

After the ICC opened, Mr. Lenhart did a follow-up study at the intersection of Muncaster Mill and Emory Lane on March 24, 2011, because of community concerns about traffic volumes on Emory Lane. He found that the traffic on Emory Lane had reduced by about 10 percent. Traffic on Muncaster Mill had reduced by 25 percent. These findings are included in a memorandum dated March 24, 2011 (Exhibit 22(c)).

Mr. Lenhart testified that he did a study to determine whether there will be a safe sight distance for vehicles entering or exiting the proposed driveway, applying a Montgomery County Department of Transportation spreadsheet with sight distance calculations based on American Association of State Highway and Transportation Officials (AASHTO) design guidelines.

Emory Lane is a two lane arterial road with an 80-foot right-of-way in the Olney Master Plan. There is a curve in Emory Lane to the south of the property, and there are some side slopes and some trees, to the north side of the property, which block sight distance in that direction. It has a posted speed limit of 30 miles per hour, but Mr. Lenhart did a speed study, to see what the prevailing speeds and the design speeds actually should be. He found that average speeds in both direction were 35 to 36 miles per hour, and the 85th percentile speed was 39 miles per hour in both directions.

¹² There is a typo on page 9 of the Staff report (Exhibit 27), which incorrectly refers to a mitigation of 3 trips, when clearly they meant 2 since they correctly indicated the required payment of \$22,600 (2 X \$11,300 per trip).

According to Mr. Lenhart, the 85th percentile speed is, in engineering principles, generally the speed that would be set as the design speed of the roadway. He rounded it to 40 miles per hour, and then looked at the sight distance design requirements for a 40 mile per hour roadway. Montgomery County requires 325 feet minimum sight distance for an arterial roadway with a 40 mile per hour design speed. By removing some of the trees from the site and regrading on the site, Petitioner can achieve about 600 feet of sight distance to the north, far in excess of the design guideline.

To the south, a fence will be moved and the site would be graded down removing a knoll that causes a sight blockage from the new driveway location. Both of those measures will improve sight distance, and it will then meet or exceed the County requirements. In Mr. Lenhart's professional opinion, the proposed new driveway location will be safe, and there will be adequate sight distance for vehicles. He also opined that the proposed on-site circulation pattern will be safe and efficient. There is more than adequate area for queuing, stacking and parking for all activities. The site will be safe for both vehicular and pedestrian traffic.

As to traffic volume, Mr. Lenhart testified that he observed queuing averaging 200 to 400 feet on Emory Lane at Muncaster Mill Road primarily from 7:30 to 8:30 in the morning. That's the peak at that intersection. The queues fluctuated and dissipated quickly, sometimes leaving no backups at all. The maximum he observed was 500 feet, which would be about 20 cars, but it did not reach Petitioner's southern property line. Since the proposed entrance is about 1,000 feet north of Muncaster Mill Road, the queue did not approach where the new driveway will be. The opening of the ICC improved the intersection by reducing the traffic volumes both on Emory Lane and Muncaster Mill Road, creating more gaps in traffic on Muncaster Mill. Thus queues before the ICC opened were a little bit higher because people would come down Emory Lane, and they didn't have enough gaps in traffic on Muncaster Mill, so they'd have to wait a little bit

longer for acceptable gaps. Now there are more gaps on Muncaster Mill, so the Emory Lane traffic can flush out quicker.

Mr. Lenhart also noted that the peak flows occur on Muncaster Mill and Emory between 7:30 to 8:30 in the morning, while the peak periods for the school is from 9:10 to 9:30, which is after the peak of commuter traffic. The traffic on Emory Lane and Muncaster Mill actually dropped off quite a bit after 9:00. In his opinion, the school added to that location is not likely to result in a larger queue. In fact, because parents no longer have to come down Emory all the way to Muncaster Mill, they would not enter the queue, and the demand at that intersection should diminish.

In Mr. Lenhart's opinion, the intensity and character of the proposed use will not have an adverse impact upon traffic, and it can be operated in harmony with the general character of the neighborhood. The proposed use will also satisfy requirement that there be adequate public facilities, including roads, to serve the proposed school.

B. Community Participants

1. John Powers (Tr. 30-32):

John Powers testified that he soon will be moving to the three plots across the street from the subject site, which are 15907, 15915 and 15921 Emory Lane. He plans to build a single family home on the center of those three lots, 15915 Emory Lane, and to leave the other two lots wooded for the time being.

Mr. Powers stated that he is very much in support of this Montessori School going in across the street from his property. He has three children, two of whom are disabled. He knew of the traffic issues on Emory Lane that exist (a very windy and busy road), but regardless of what went in across the street, there would be traffic issues.

Mr. Powers hopes that, as a part of the upgrades of this neighborhood, some accommodation could be made for traffic, either straightening out the road or making sure that there is adequate egress and entrance to the Montessori School.

2. Marie Lisa McKillop (Tr. 33-34):

Marie Lisa McKillop testified that she lived at 14095 Clarksville Pike, Highland, Maryland. She has known the Bissett family since their children grew up together. Her daughter was a volunteer at the Montessori School during her high school years, and it was because of their wonderful support that she became a teacher in Montgomery County. The school also provides scholarships for students who cannot afford to pay, which she feels is very important.

Ms. McKillop is a past president of the Chamber of Commerce in Olney, which she believes wholeheartedly supports the school, although she was not testifying on behalf of the Chamber of Commerce.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioner will have satisfied all the requirements to obtain the special exception, if it complies with the recommended conditions (Exhibit 27).

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Zoning Ordinance § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a private educational institution use. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects

thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

In this case, the Technical Staff suggested the following inherent characteristics associated with the use¹³ (Exhibit 27, p. 13):

- (1) buildings adequate to house the students and activities;
- (2) parking facilities;
- (3) lighting;
- (4) drop-off and pick-up areas;
- (5) outdoor play areas;
- (6) noise from outdoor activities;
- (7) long hours of operation;
- (8) occasional special events;
- (9) students, faculty and support staff; and
- (10) vehicular trips to and from the site associated with students, staff, supply deliveries and trash pickup.

As observed by Staff, many of the characteristics of the proposed special exception are inherent. The proposed access driveway, internal vehicular circulation system, play areas, lighting and onsite parking areas shown on the site plan are physical characteristics associated with a private school. The number of staff and students, the hours and proposed manner of operation, and the intended special events are typical operational characteristics of a private school.

Technical Staff indicated that it had identified only one non-inherent characteristic, the location of the property adjacent to a historic designated property.¹⁴ However, after the addition of evergreen plantings to the southern side yard to enhance screening from the adjacent historic site, Historic Preservation Staff stated that it “recognizes that the applicants have revised their proposal to provide considerable greenscaping to mitigate any visual impact on the adjacent historic

¹³ Staff mistakenly identified the use in this paragraph as a “child day care center.” Since a private educational institution has similar inherent characteristics to a large child day care center, the Hearing Examiner finds this listing to be appropriate in this case, with the addition of the word “students” placed in item (9) by the Hearing Examiner.

¹⁴ Petitioner’s site planner, Brian Donnelly, did not agree with Technical Staff’s characterization of the historic house adjacent to the site as “a non-inherent adverse effect” because it is over 350 feet away, and therefore would not be impacted by the proposed use. Tr. 63-65.

resource.” Exhibit 27, attached e-mail of April 13, 2011 from Scott Whipple. As a result, Technical Staff concluded, “In view of the revisions to the landscape plan, staff concludes that the adjacent Historic property is adequately screened and buffered from the proposed use.” Exhibit 27, p. 13.

The Hearing Examiner finds that, although proximity of the site to the historic Nathan Shaw House is a non-inherent site characteristic, any adverse effect that might have been created has been attenuated by distance and the additional screening to be provided by Petitioner.

The Hearing Examiner finds that there is one other non-inherent characteristic of the site, its placement on Emory Lane at a location where the road’s curves and grading interfere with acceptable sight distances, absent either a reconfiguration of the roadway or relocation of the driveway, re-grading of the site and removal of some trees. Petitioner has proposed to do the latter (*i.e.*, relocation of the driveway, re-grading of the site and removal of some trees), as discussed in Part II. D. 8. of this report.¹⁵ Technical Staff found that “with improving the sight distance, the proposed access point is adequate to accommodate the site-generated traffic.” Exhibit 27, p. 8. The Hearing Examiner finds that Petitioner has appropriate proposals for dealing with the sight-distance safety issues, which will be further studied and finalized at subdivision.

Technical Staff concluded (Exhibit 27, 13):

The proposed private school is consistent with all applicable standards of the RE-1 zone and satisfies all applicable requirements to approve a Private Educational Institution Special Exception. Based on the traffic analysis, the vehicular and pedestrian movements surrounding the site and on Emory Lane would be safe, adequate, and efficient. The lighting concept as depicted on the lighting plan is appropriate for the proposed use at the subject location.

With the recommended conditions of approval of the Special Exception, the inherent and non-inherent impacts associated with the proposed use do not rise to a level sufficient to warrant a denial of the application.

¹⁵ Petitioner is not proposing any improvements to Emory Lane itself because the County has plans eventually to relocate and realign it to a 90-degree angle to Muncaster Mill Road, taking that S-curve out of it and improving the roadway to a larger arterial road. Tr. 44-45.

After carefully reviewing the entire record, the Hearing Examiner is convinced, as was the Technical Staff, that the requested use, if properly conditioned, will have no significant adverse effects, inherent or non-inherent, on the surrounding area.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner's documentary evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General conditions:

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

Conclusion: Private educational institutions are permitted by special exception in the RE-1 Zone pursuant to Zoning Ordinance §59-C-1.31(d).

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use would comply with the standards and requirements set forth for in Zoning Ordinance §59-G-2.19, as detailed in Part IV. C. of this report.

(3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a*

decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The subject site is located at the extreme southern end of the area covered by the 2005 Olney Master Plan. As discussed in Part II. C. of this report, Technical Staff concluded that “The Proposed use does not conflict with the 2005 Olney Master Plan.” Exhibit 27, p. 14. Staff found that the small increase in imperviousness

... does not constitute a significant negative impact on the environmental health of this portion of the Upper Rock Creek watershed. The levels of imperviousness proposed for this project do not meet a reasonable definition of excessive that would conflict with the Plan’s recommendation. [April 16, 2011 memorandum attached to the Staff report and quoted in Exhibit 27, at p. 14.]

Technical Staff also found that the proposed buildings will be compatible with the residential area (Exhibit 27, pp. 11-12):

The exterior of the proposed four new buildings appears residential and incorporates several features of a single-family detached home including a residential type entrance, windows and low roofing. The existing dwelling and barn will be retained as part of the proposed development of the site. The design and scale of the new building maintain compatibility with that of the existing residential structure and barn. The surrounding area characterized by residential uses of semi-rural nature. The proposed design of the building will be appropriate and relates well with the characteristics of existing buildings in the area.

Petitioner’s site planner, Brian Donnelly, agreed with this assessment. Tr. 83-85.

Based on this record, the Hearing Examiner concludes that the application is consistent with the recommendations contained in the 2005 Olney Master Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: Technical Staff concluded that the special exception application will be in harmony with the general character of the neighborhood. Exhibit 27, pp. 14-15. Although the proposed use, by its nature, represents a larger day time population compared to that of the residential use, Staff found that the relatively large size of the property coupled with substantial setbacks, well organized site layout, building orientation, efficient on and near-site circulation patterns, extensive landscaping, screening and buffering, mitigate any potential negative impacts. Moreover, analyses of future transportation and traffic conditions, including queuing studies, show that the new trips generated by the proposed use are not likely to have a significant impact on the residential neighborhood or the roads. Adequate off-street parking spaces are provided to satisfy the school's parking needs.

Based on this record, the Hearing Examiner agrees with Technical Staff's conclusion that the special exception will be in harmony with the general character of the neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth in the previous answer and in Part II. D. of this report, the evidence supports the conclusion that, with the specified operational limitations and other conditions, the requested new use would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found that the proposed use will not cause any unacceptable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site. Exhibit 27, p. 15. Some noise and physical activity from children is an inherent characteristic of this special exception. However, the use will be adequately screened from the views of neighboring properties. The proposed two outdoor play areas are located at a substantial distance from the nearest residential properties and enclosed by 4-foot high, three-rail fence and screened with substantial plantings of shade, ornamental and evergreen trees as well as various types of shrubs. The proposed lighting will not exceed 0.1 foot-candles along the rear and side property lines. This is in accordance with the lighting standards for residential zones set forth in Zoning Ordinance §59-G-1.23(h). There is no evidence that the proposed uses will create any unacceptable vibrations, fumes, odors or dust. Based on this record, the Hearing Examiner finds that the proposed use will not cause any unacceptable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Technical Staff reports that the proposed Special Exception will not increase the number, intensity, and scope of approved special exceptions in the area enough to affect the area adversely or alter its low intensity residential nature. Exhibit 27, p. 16. Moreover, by definition, “*Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*”

As previously stated, the proposed use is consistent with the recommendations of the Olney Master Plan.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence summarized above supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. Rather, it will continue to provide a valuable service to the community by offering quality education to the children of the area. Moreover, as noted by Technical Staff, the proposed special exception will result in further improving existing landscaping, trees and vegetation, via Forest Conservation requirements and recommended plantings, and will thus enhance the neighborhood. Exhibit 27, p. 16.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*
- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:*
- (i) does not require approval of a new preliminary plan of subdivision; and*
 - (ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;*
- then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will*

be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

Conclusion: As determined by Technical Staff (Exhibit 27, p. 16), the special exception sought in this case would require approval of a preliminary plan of subdivision. Therefore, the public facilities review will be done by the Planning Board at subdivision,¹⁶ and approval of the Preliminary Plan will be a condition of this special exception. Nevertheless, Petitioner's traffic engineer, Michael Lenhart, did do a traffic analysis (Exhibits 11 and 22(b), (c) and (d)), and found that the Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR) would be met, as discussed in Part II. D. 8. of this report. Technical Staff accepted these results, finding that this application will meet LATR and PAMR. Exhibit 27, pp. 16-17. The Hearing Examiner finds that Petitioner has made a sufficient showing at this stage that public facilities will be adequate, subject to final review at subdivision.

(C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Technical Staff found (Exhibit 27, p. 20):

With the recommended conditions, including, improving the sight distance, the proposed access point is adequate to accommodate the site-generated traffic. The proposal provides a safe, sufficient and orderly internal traffic/pedestrian circulation system which provides for adequate drop-off and pick-up areas for all programs and events including on-site queuing and stacking.

Based on the evidence in this record, as discussed in Part II. D. 8. of this report, the Hearing Examiner concludes that the proposed use, as conditioned, would not reduce the safety of pedestrian or vehicular traffic.

¹⁶ The Technical Staff report erroneously indicates that "the adequacy of public facilities will be determined by the Board of Appeals at that time . . ." Exhibit 27, p. 16. Staff undoubtedly meant to say that it would be determined by the Planning Board at subdivision.

C. Specific Standards: Educational Institutions, Private

The specific standards for a private educational institution are found in Code § 59-G-2.19. The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the proposed use would be consistent with these specific standards, as outlined below.

Sec. 59-G-2.19. Educational institutions, private.

(a) *Generally. A lot, tract or parcel of land may be allowed to be used for a private educational institution if the board finds that:*

(1) *the private educational institutional use will not constitute a nuisance because of traffic, number of students, noise, type of physical activity, or any other element which is incompatible with the environment and character of the surrounding neighborhood;*

Conclusion: For the reasons set forth in the General Standards section above and in Part II. D.

of this report, as long as appropriate conditions are imposed, the uses will not constitute a nuisance because of traffic, number of students, noise, type of physical activity or any other element, and they will be compatible with the environment and character of the area.

(2) *except for buildings and additions completed, or for which a building permit has been obtained before (date of adoption [April 2, 2002]), the private educational institution must be in a building architecturally compatible with other buildings in the surrounding neighborhood, and, if the private educational institution will be located on a lot, tract, or parcel of land of 2 acres or less, in either an undeveloped area or an area substantially developed with single-family homes, the exterior architecture of the building must be similar to a single-family home design, and at least comparable to any existing homes in the immediate neighborhood;*

Conclusion: As discussed in Part II. D. 2. of this report, Petitioner's architect, Timothy Daniel, testified (Tr. 91-97) that his primary objectives in design of the proposed new school were to create buildings whose scale and character are in harmony with the surrounding residential, quasi-rural character of the surrounding neighborhood,

and to ensure safe and efficient operation of the school. In Mr. Daniel's opinion, the proposed structures satisfy the requirements of §59-G-1.23(g) of the Zoning Ordinance that they must be well-related to the surrounding area in their siting, landscaping, scale, bulk, height, materials and textures, and must have a residential appearance where appropriate. They will also be architecturally compatible with the surrounding development, in accordance with Section 59-G-2.19(a)(2).

Technical Staff agreed, stating (Exhibit 27, p. 19):

The approximately 5-acre property allows for generous setbacks from the Road and the adjoining properties. The design, massing and the setting of the proposed classroom buildings as well as the overall site design complement the architectural characteristics of the existing residential structure on the property and relate to the residential and semi-rural nature of the surrounding neighborhood. The proposed classroom buildings incorporate architectural elements such as dormer windows, covered porches and simulated stones and lap siding blending in with the existing homes in the immediate neighborhood.

Based on this record, the Hearing Examiner finds that the requirements of this section are met.

(3) *the private educational institution will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community; and*

Conclusion: For the reasons set forth in the General Standards section above, the Hearing Examiner finds that the use will not adversely affect or change the present character or future development of the surrounding neighborhood. As noted by Technical Staff (Exhibit 27, p. 19),

The proposed school will not, affect adversely or change the present character or future development of the surrounding residential community. The school has been operating in the community, about half a mile southwest of the proposed new location, for 37 years without causing any adverse impact to the immediate neighborhood. The school at the proposed location is designed to blend with the

prevailing low density residential and semi-rural character of the surrounding area. Outdoor activities are suitably screened with a combination of sizeable setbacks, fences and ample landscaping.

(4) the private educational institution must conform with the following standards in addition to the general development standards as specified in Section G-1.23:

- a. Density—The allowable number of pupils per acre permitted to occupy the premises at any one time must be specified by the Board considering the following factors:*
 - 1. Traffic patterns, including:*
 - a) Impact of increased traffic on residential streets;*
 - b) Proximity to arterial roads and major highways;*
 - c) Provision of measures for Transportation Demand Management as defined in Section 42A-21 of the Montgomery County Code;*
 - d) Adequacy of drop-off and pick-up areas for all programs and events, including on-site stacking space and traffic control to effectively deter queues of waiting vehicles from spilling over onto adjacent streets; and*
 - 2. Noise or type of physical activity;*
 - 3. Character, percentage, and density of existing development and zoning in the community;*
 - 4. Topography of the land to be used for the special exception; and*
 - 5. Density greater than 87 pupils per acre may be permitted only if the Board finds that (i) the program of instruction, special characteristics of students, or other circumstances justify reduced space and facility requirements; (ii) the additional density will not adversely affect adjacent properties; (iii) additional traffic generated by the additional density will not adversely affect the surrounding streets.*

Conclusion: Petitioner would have up to a maximum of 180 students and 34 staff members.

That represents roughly 36 students per acre ($180 / 5 = 36$), which is less than half the maximum permitted density of 87 student per acre. The traffic situation and the other topics in this section have been discussed at length in Part II. D. of this

report. As indicated by Technical Staff (Exhibit 27, p. 20), with the recommended conditions, “[t]he proposal provides a safe, sufficient and orderly internal traffic/pedestrian circulation system which provides for adequate drop-off and pick-up areas for all programs and events including on-site queuing and stacking.”

Thus, the record demonstrates that Petitioner would meet the standards set forth in this section with a maximum student enrollment of 180 on site at any given time.

A condition has been recommended establishing this limit.

- b. Buffer—All outdoor sports and recreation facilities must be located, landscaped or otherwise buffered so that the activities associated with the facilities will not constitute an intrusion into adjacent residential properties. The facility must be designed and sited to protect adjacent properties from noise, spill light, stray balls and other objectionable impacts by providing appropriate screening measures, such as sufficient setbacks, evergreen landscaping, solid fences and walls.*

Conclusion: As stated by Technical Staff (Exhibit 27, p. 21),

The buildings, outdoor play areas, the parking area and the trash dumpster are substantially distanced and separated from the nearest residential uses. Moreover, proposed screening and buffering in the form of landscaping, fences, forest conservation easement, topography and recommended supplemental planting along the property line adjacent to the historic property, ensure that the subject property and activities thereon are adequately screened and buffered from adjoining and confronting properties. The lighting concept as depicted on the lighting plan is appropriate for the proposed use at the subject location.

Based on this record, the Hearing Examiner finds that the proposed use is compliant with this section.

- (b) If a Private Educational Institution operates or allows its facilities by lease or other arrangement to be used for: (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, the Board must find, in addition to the other required findings for the grant of a Private Education Institution special exception, that the activities in combination with other activities of the institution, will not have an adverse effect on the*

surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity, frequency, or duration of activities. In evaluating traffic impacts on the community, the Board must take into consideration the total cumulative number of expected car trips generated by the regular academic program and the after school or summer programs, whether or not the traffic exceeds the capacity of the road. A transportation management plan that identifies measures for reducing demand for road capacity must be approved by the Board.

The Board may limit the number of participants and frequency of events authorized in this section.

Conclusion: Petitioner operates summer sessions under the same hours of operations, enrollment caps, staffing and procedures as during the school year (although summer enrollment is usually lower than during the school year). Petitioner does not host any of the other referenced activities. Petitioner's methodology for managing traffic and any overflow parking for special events listed in its Second Revised Statement of Operations (Exhibit 42(a)) is specified in that Statement. The evidence discussed in Part II of this report supports the conclusion that the proposed special exception at this location, as conditioned, will not create the listed adverse effects.

(c) *Programs Existing before April 22, 2002.*

(1) Where previously approved by the Board, a private educational institution may continue the operation of (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, whether such programs include students or non-students of the school, if the number of participants and frequency of events for programs authorized in 59-G-2.19(b) are established in the Board's approval.

(2) Where not previously approved by the Board, such programs may continue until April 22, 2004. Before April 22, 2004, the underlying special exception must be modified to operate such programs, whether such programs include students or non-students of the school. The Board may establish a limit on the number of participants and frequency of events for authorized programs.

Conclusion: Inapplicable, as the private educational institution special exception would be new.

(d) *Site plan.*

(1) *In addition to submitting such other information as may be required, an applicant shall submit with his application a site plan of proposed development. Such plan shall show the size and shape of the subject property, the location thereon of all buildings and structures, the area devoted to parking and recreation facilities, all access roads and drives, the topography and existing major vegetation features, the proposed grading, landscaping and screening plans and such other features necessary for the evaluation of the plan.*

(2) *No special exception, building permit or certificate of occupancy shall be granted or issued except in accordance with a site plan of development approved by the board. In reviewing a proposed site plan of development the board may condition its approval thereof on such amendments to the plan as shall be determined necessary by the board to assure a compatible development which will have no adverse effect on the surrounding community, and which will meet all requirements of this chapter. Any departure from a site plan of development as finally approved by the board shall be cause for revocation of the special exception, building permit or certificate of occupancy, in the manner provided by law.*

Conclusion: Appropriate plans (NRI/FSD, Site Plan, Landscaping Plan, Lighting Plan, PFCP, and Statement of Operations) have been submitted by Petitioner and are binding on it unless modified at preliminary plan, and a condition as been recommended in Part V of this report to address that eventuality.

(e) *Exemptions. The requirements of Section G-2.19 do not apply to the use of any lot, lots or tract of land for any private educational institution, or parochial school, which is located in a building or on premises owned or leased by any church or religious organization, the government of the United States, the State of Maryland or any agency thereof, Montgomery County or any incorporated village or town within Montgomery County. This exemption does not apply to any private educational institution which received approval by the Board of Appeals to operate a private educational institution special exception in a building or on a lot, lots or tract of land that was not owned or leased by any church or religious organization at the time the Board of Appeal's decision was issued.*

Conclusion: This subsection is not applicable.

(f) *Nonconforming uses. Nothing in this chapter shall prevent any existing private educational institution which obtained a special exception prior to the effective date of this chapter, from continuing its use to the full extent authorized under*

the resolution granting the respective special exception, subject, however, to division 59-G-4 of this chapter.

Conclusion: This subsection is not applicable.

(g) *Public Buildings.* * * *

Conclusion: This subsection is not applicable.

(h) *Applications filed before May 6, 2002. Any application filed before May 6, 2002 for a private educational institution special exception or modification of a private educational institutional special exception must comply with the requirements of Article 59-G and Article 59-E in effect at the time the special exception was filed.*

Conclusion: This subsection is not applicable.

D. Other Applicable Standards

Section 59-G-1.23. General development standards.

(a) *Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: The following chart from the Technical Staff Report (Exhibit 27, p. 10), demonstrates compliance with all applicable development standards:

Current Development Standard: RE-1	Standard	Proposed
Minimum Lot Area 59-C.1.322 (a)	40,000 sf	217,937 sf (5ac)
Minimum Lot width:59-C.1.322 (b):		
• @ Front building line	125 ft	330.5± feet
• @ Street line	25 ft	344.5± ft
Minimum Building Setback:59-C.1.323:		
(a) Front (From Street)	50 ft	210ft
(b) Side		
▪ One side (south)	17 ft	20ft
▪ Sum of both sides(east)	35 ft	210ft
▪ Rear	35 ft	235 ft
Minimum Building Setback for an accessory Building §59-C-326(a)(3):Existing Residence/Barn:		
• From Street Line	80ft	270 ft/270 ft
• From a rear lot line	35 ft (BRL)	NA/214
• From a side lot line	15 ft	73/57 ft
Maximum Building Height 59-C.1.327:		
• Proposed Class Room/Administration Bldg	50 ft	22ft
• Existing Residences (accessory bldg)	N/A	24ft
• Existing Barn (accessory bldg)	N/A	14ft
Maximum Building Coverage 59-C.1.328	15%	10.7%

(b) Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.

Conclusion: As discussed in Par II. D. 7 of this report, Petitioner will be in compliance with all applicable parking standards.

*(c) Minimum frontage * * **

Conclusion: Not applicable, since none of the listed uses are involved and no waiver is being sought.

(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

Conclusion: As stated in its memorandum of May 18, 2011 (Exhibit 34), the Planning Board unanimously approved Petitioner's Preliminary Forest Conservation Plan (PFCP). Exhibit 22(p). Since this case must go through subdivision, the Planning Board will review the final forest conservation plan at that time. The following condition has been recommended in Part V of this report:

The proposed development must comply with the conditions of the Preliminary Forest Conservation Plan, Exhibit 22(p), until approval of the Final Forest Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan.

(e) Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.

Conclusion: Water Quality Plans are used in special protection areas (SPAs), as specified in Zoning Ordinance §59-A-2.1. Since the subject site is not in an SPA, this provision is inapplicable to this case.

(f) *Signs. The display of a sign must comply with Article 59-F.*

Conclusion: As discussed in Part II.D. 5. of this report, Petitioner seeks to erect a single, ground-mounted entry sign for which a permit will be required. A condition has been recommended in Part V of this report to assure compliance with Article 59-F.

(g) *Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: As stated by Technical Staff (Exhibit 27, pp. 11-12):

The exterior of the proposed four new buildings appears residential and incorporates several features of a single-family detached home including a residential type entrance, windows and low roofing. The existing dwelling and barn will be retained as part of the proposed development of the site. The design and scale of the new building maintain compatibility with that of the existing residential structure and barn. The surrounding area characterized by residential uses of semi-rural nature. The proposed design of the building will be appropriate and relates well with the characteristics of existing buildings in the area.

The issue of compatibility was also discussed earlier in this report. Based on this record, the Hearing Examiner finds that the proposed structures will be compatible with the neighborhood.

(h) *Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

(1) *Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*

(2) *Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

Conclusion: As discussed in Part II. D. 4. of this report, the lighting will be residential in character, and will not cause glare on adjoining properties, nor exceed the 0.1 foot-candle standard at the side and rear property lines.

Section 59-G-1.26. Exterior appearance in residential zones.

A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.

Conclusion: As discussed above, the proposed structures will be compatible with the neighborhood and will be suitably screened. Appropriate pedestrian circulation will also be provided. The Hearing Examiner finds that the provisions of this section will be met.

Based on the testimony and evidence of record, I conclude that, with the recommended conditions, the plans proposed by Petitioner meet the specific and general requirements for the proposed uses, and that the Petition should be granted, with the conditions recommended in the final section of this report.

V. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition S-2802, which seeks to obtain a private educational institution special exception, on property located at 15920 Emory Lane, Rockville, Maryland, be *granted* with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. The school is limited to a maximum of 180 students and 34 employees on site at one time.
3. Hours of operation are limited to 6:30 a.m. to 6:30 p.m. Monday through Friday, 12 months a year. Activities such as an open house, parent/instructor meetings and special events may occur only between the hours of 9:00 a.m. and 2:30 p.m. on weekends and no later than 9:00 p.m. weekdays. The permitted special events are specified in the Second Revised Statement of Operations (Exhibit 42(a)).
4. All student drop-offs and pick-ups shall occur on site in accordance with the Second Revised Statement of Operations (Exhibit 42(a)).
5. On street parking in the vicinity of the site in connection with the Norbeck Montessori Day School is prohibited.
6. Petitioner must comply with the terms of its Site Plan (Exhibits 22(l) and (m)), its Landscape and Lighting Plan (Exhibits 22(n) and (o)); its Lighting Photometric Plans (Exhibits 16(a) and (b)); and its Second Revised Statement of Operations (Exhibit 42(a)).
7. Petitioner must apply for Preliminary Plan review, per Chapter 50 of the Montgomery County Code. Since the proposed use will require subdivision, in accordance with Zoning Ordinance §59-G-1.21(a)(9), approval of this special exception is conditioned upon approval of a preliminary plan of subdivision by the Planning Board. The adequacy of public facilities will be determined by the Planning Board at the time of the Preliminary Plan review. If significant changes to the site plan or other plans filed in this case are required at subdivision, Petitioner must request modification of the special exception from the Board of Appeals. If a minor change in landscaping is required at

subdivision to ensure adequate fire department access, and Technical Staff certifies that the change is de minimis and will not have any adverse impact on the abutting neighbors, Petitioner may submit a copy of the revised plans to the Board without formally requesting an administrative modification.¹⁷

8. Petitioner must comply with the conditions of the Preliminary Forest Conservation Plan, Exhibits 22(p), until approval of the Final Forest Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan.
9. Petitioner must comply with the stormwater management plan ultimately approved by the Department of Permitting Services.
10. Petitioner may display one freestanding, non-illuminated sign, as depicted on the Site Plan Details (Exhibit 22(m)), and it must meet the requirements of Section 59-F-4.2(a)(3)(B) in terms of location and size. Petitioner must obtain a sign permit from the Department of Permitting Services prior to posting any sign and must file a copy with the Board of Appeals.
11. Petitioner must ensure that a sufficient number of its staff park at an off-site location to avoid overflow parking at the subject site during all special events which will result in parking demands exceeding the capacity of the site, in accordance with the terms of its Second Revised Statement of Operations (Exhibit 42(a)). Petitioner must make the necessary arrangements to facilitate transporting staff to and from the School when off-site parking is required.

¹⁷ This condition is recommended at Petitioner's request to avoid potential delays which might prevent them from moving the school from its current location to the subject site in time to open for the 2012 school year. Tr. 66-73. Petitioner proposed a form of this condition (Exhibit 41) which did not differentiate between minor and major changes. The version recommended by the Hearing Examiner would avoid further Board of Appeals review only if de minimis changes are made in the plans.

12. Petitioner must comply with all Maryland State and Montgomery County licensure requirements and standards for the operation of a private educational institution.
13. In no event may a child be dropped off before a staff member is present to supervise that child; nor may a child be left alone if a parent is late in making a pick-up.
14. All children must be under the direct supervision of a staff member at all times, both inside and outside the building. Outdoor play may not begin before 9:30 a.m. No amplified music may be played outside the building.
15. The Petitioner shall maintain the grounds in a clean condition, free from debris, on a daily basis.
16. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: July 12, 2011

Respectfully submitted,

Martin L. Grossman
Hearing Examiner